

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,) Docket No. 3:06-CR-719
Plaintiffs,) Toledo, Ohio
v.) May 21, 2008
MOHAMMED AMAWI, ET AL.,)
Defendants.)

TRANSCRIPT OF JURY TRIAL, VOLUME 54
BEFORE THE HONORABLE JAMES G. CARR
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: Gregg N. Sofer
David I. Miller
Jerome J. Teresinski
U.S. Department of Justice
10th & Constitution Avenue, NW
Washington, DC 20530
(202) 353-3464

Thomas E. Getz
Justin E. Herdman
Office of the U.S. Attorney
801 Superior Avenue, W
Cleveland, Ohio 44113
(216) 622-3840

1 Elias Muawad
2 Muawad & Muawad
3 Suite 209
4 36700 Woodward Avenue
5 Bloomfield Hills, Michigan 48304
6 (248) 594-4700

7 For the Defendant
8 El-Hindi:

9 Charles M. Boss
10 Boss & Vitou
11 111 West Dudley Street
12 Maumee, Ohio 43537
13 (419) 893-5555

14 Stephen D. Hartman
15 Kerger & Kerger
16 Suite 201
17 33 South Michigan Street
18 Toledo, Ohio 43602
19 (419) 255-5990

20 Alek H. El-Kamhawy
21 Raslan, El-Kamhway & Pla
22 Suite 3FE
23 1700 East 13 Street
24 Cleveland, Ohio 44114
25 (216) 928-1500

1 For the Defendant
2 Mazloum:

3 David L. Doughten
4 4403 St. Clair Avenue
5 Cleveland, Ohio 44103-1125
6 (216) 361-1112

7 Jeffrey J. Helmick
8 Helmick & Hoolahan
9 2nd floor
10 1119 Adams Street
11 Toledo, Ohio 43624-1508
12 (419) 243-3800

13 Mohammed Abdrabboh
14 1620 Ford Avenue
15 Wyandotte, Michigan 48192
16 (734) 283-7000

17 Court Reporter:

18 Angela D. Nixon, RPR, CRR
19 1716 Spielbusch Avenue
20 Toledo, Ohio 43624

1 (419) 260-5259

2
3 Proceedings recorded by mechanical stenography, transcript
4 produced by notereading.

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 THE COURT: Okay. I think the issues are what is
2 it that the government proposes to have Mr. Kohlmann
3 testify about. And in other words, what do you want him to
4 tell the jury and why do you want him to do so? And to the
5 extent that there's a different meaning about the Ekhlaas
6 issue, what is that about and how the parties think I
7 should decide that?

8 And then there's this proposed Exhibit 209 and
9 what is that and how does that work into everything else?
10 I think that's what we're here about this morning. If I
11 misstated it, let me know.

12 MR. HERDMAN: With respect to the first issue,
13 which is what the government is proffering with
14 Mr. Kohlmann's testimony this morning, my understanding was
15 we covered that on Friday afternoon.

16 THE COURT: I want to kind of confirm that so
17 there's clarity and certainty as we head down that road.

18 MR. HERDMAN: Happy to do that.

19 THE COURT: Go ahead. How does 209 fit in and so
20 forth and so on?

21 And Amy, why don't you tell the jurors it's going
22 to be 9:00.

23 COURTROOM DEPUTY: That's what time they're
24 supposed to be here.

25 MR. HERDMAN: First area of testimony that --

1 THE COURT: Excuse me.

2 Go ahead, Mr. Herdman.

3 MR. HERDMAN: Well, obviously, the first section
4 of his testimony deals with his background, his
5 qualifications. I'm going to try to move fairly briskly
6 through that, Your Honor. The bulk of his testimony,
7 again, which is not extensive by any means, but what is
8 basically broken down to about five parts.

9 The first portion of his testimony deals with the
10 webpage known as Muntada Al-Ansar, M-U-N-T-A-D-A, second
11 ward is A-L, third word is A-N-S-A-R. And when we
12 discussed this on Friday, Your Honor, I told The Court that
13 I would essentially lead Mr. Kohlmann through a description
14 of what that forum is. In other words, to prevent any X,
15 Y, and Z temporanized, I don't know if that's a word.

16 THE COURT: It probably fits. It's as good as
17 any I can think of.

18 MR. HERDMAN: I will lead him, essentially,
19 through the following facts: That this website served as
20 the primary and initial distribution point for video
21 releases by Al-Qaeda in Iraq in late 2004 and early 2005,
22 that this webpage was password protected, required a
23 registration after May of 2004, and it required users to
24 have a log in and password.

25 And then there are a number of consensual

1 recordings that have already been played. We've trimmed
2 those down so that I think the longest consensual -- the
3 longest segment that we'll be playing is about 3 minutes,
4 but most of them about a minute. And essentially, it's
5 just segments where the defendants are talking about this
6 particular website.

7 THE COURT: And you say "the defendants," which
8 ones?

9 MR. HERDMAN: That would be Mr. Amawi and
10 Mr. El-Hindi.

11 THE COURT: Okay.

12 MR. HERDMAN: And the I provided to counsel the
13 actual clips that we'll be playing, as well as -- they got
14 that about 8:00 last night -- but prior to that, I provided
15 them with a list of the kind of overall segment from which
16 the clips were going to be playing were derived.

17 THE COURT: I'm sorry, I'm -- okay. Go ahead.

18 MR. HERDMAN: And all of the clips that will be
19 played for Mr. Kohlmann, Your Honor, have already been
20 played in the government's direct case, primarily through
21 Mr. Griffin. And those -- the dates that -- the dates that
22 deal with the Muntada Al-Ansar webpage.

23 THE COURT: That's okay. Why don't you move on?

24 MR. HERDMAN: Okay. Happy to.

25 The second area of testimony deals with the

1 Ekhlaas webpage, and there are actually no consensual
2 recordings that will be played with respect to this block
3 of testimony.

4 Can you pull up Exhibit 213?

5 This is where I think Mr. Hartman had a desire to
6 voir dire Mr. Kohlmann with respect to one of our exhibits.
7 This is -- yesterday I provided counsel with what the
8 government will offer through Mr. Kohlmann with respect to
9 213. If you remember on Friday, Mr. Antoon testified as to
10 the translation he had made of Exhibit 213. The -- the
11 exhibit that was put up that was marked as 213 on Friday
12 actually contained -- inadvertently contained some of what
13 I think was Mr. Antoon's translated work. This is the
14 actual untranslated thread from the Ekhlaas webpage.

15 If you can scroll down through that.

16 And I should say this is a copy of that, Your
17 Honor. Because this -- this is an actual living, breathing
18 webpage. We had to print it off out of our U.S. Attorney's
19 Office computers in order to sticker it and provide it here
20 in court. So you see at the bottom there's a -- there's an
21 actual, what appears to be a file path, and it has my name
22 on it. That's because I printed off this document. And
23 I -- somehow that ended up on the document.

24 THE COURT: That can be deleted.

25 MR. HERDMAN: And I can make it clear that this

1 is -- that it's a copy of that actual webpage, Your Honor.

2 THE COURT: And what is the purpose of showing
3 this exhibit?

4 MR. HERDMAN: The purpose of showing this exhibit
5 is that, essentially, Your Honor, this is a copy of the
6 webpage that Marwan El-Hindi and Darren Griffin viewed on,
7 I believe it was February 18th, 2005. And this is sort of
8 the last leg in the government's proof that this is, in
9 fact, the webpage, that they were viewing the translation.
10 And that consensual recording of that, I don't need to go
11 through that with Mr. Kohlmann. All I need to do is,
12 essentially, introduce this exhibit. Through his research,
13 he's been able to acquire this particular exhibit.

14 THE COURT: And he can testify with a reasonable
15 degree of certainty that this is a duplicate of how it
16 appeared then?

17 MR. HERDMAN: Yes, Your Honor.

18 THE COURT: In content and appearance?

19 MR. HERDMAN: Yes.

20 THE COURT: Even though it's, I guess -- even if
21 I logged on there, that's what I would see?

22 MR. HERDMAN: Actually, this is still up on the
23 Ekhlaas webpage. But the threads are all dated. That's
24 how he's able to determine that hasn't changed at all since
25 then. There's some other exhibits with respect to Ekhlaas.

1 Would you like me to go through those again, Your Honor?

2 There's Exhibit 73, page 3.

3 THE COURT: Okay.

4 MR. HERDMAN: That's the handwritten Ekhlaas
5 thread which Exhibit 213 relates. There's Exhibit 74.

6 Zero in on the to line there.

7 And that's an e-mail that was sent to Darren
8 Griffin from -- essentially, Mr. Kohlmann can confirm that
9 that is the e-mail address of the Ekhlaas webpage. There
10 are a number of --

11 THE COURT: Who sent that?

12 MR. HERDMAN: I'm sorry, Your Honor.

13 THE COURT: Just remind me who sent that e-mail.

14 MR. HERDMAN: That was sent to Darren Griffin
15 from the -- testimony right now is it's from
16 Ekhlaas@hotmail.com.

17 THE COURT: Okay.

18 MR. HERDMAN: And there are a number of cookies
19 that were on Marwan El-Hindi's computer that were already
20 testified to with respect to Ekhlaas. AlEklhaas.net,
21 Ekhlaas.com.

22 THE COURT: And are those exhibits or is this --

23 MR. HERDMAN: The cookie history is Exhibit
24 165A-1B.

25 THE COURT: Okay.

1 MR. HERDMAN: And I should say, Your Honor --
2 this is going back to the previous topic, the Muntada
3 Al-Ansar webpage. There was some cookie history that dealt
4 with that, that particular webpage as well, Muntada
5 Al-Ansar.

6 THE COURT: Yeah.

7 MR. HERDMAN: And then the next block of
8 testimony deals with a website known as "Ansar Jihad."

9 Can you pull up Exhibit 62?

10 And this is a printout of the Ansar Jihad webpage
11 that was provided to Darren Griffin on February 16th, 2005.

12 THE COURT: By?

13 MR. HERDMAN: By Marwan El-Hindi. And
14 Mr. Kohlmann's testimony here would be that the Ansar
15 Jihad, this webpage was not password protected to get to
16 this particular webpage; however, to link to the videos
17 from this page, many of them would be password protected.
18 And the only reason that that's relevant is because
19 Mr. Amawi, on November 23rd, 2004 discusses a website where
20 they had videos relating to Afghanistan and Palestine, and
21 he tries to go to one of the videos and finds out that it's
22 password protected. And Mr. Kohlmann's opinion is that he
23 actually accessed the Ansar Jihad webpage and is trying to
24 go to one of those external sites that links off Ansar
25 Jihad, but for some reason that external site is password

1 protected.

2 THE COURT: And why does that matter?

3 MR. HERDMAN: It matters because, again, this is
4 a -- this is a website that all of the defendants are aware
5 of and discuss amongst themselves. And this is Mr. Amawi
6 actually attempting to link to another website from Ansar
7 Jihad on November 23rd, 2004, which is a little less than
8 two months prior to the date when Mr. Griffin is handed
9 this printout from the webpage by Mr. El-Hindi.

10 And then if you can bring up Exhibit 77-1AD?

11 MR. BOSS: Mr. Herdman, can I interrupt for a
12 moment?

13 Was that testimony regarding Exhibit 62 that this
14 was a document given to Mr. Griffin by Mr. El-Hindi, I
15 thought that was pertaining to 61?

16 THE COURT: Two things: Can you stand up and can
17 you speak up?

18 MR. BOSS: Beg your pardon.

19 THE COURT: I'm not sure Angela heard everything,
20 but go ahead.

21 MR. BOSS: I beg your pardon. I was asking
22 Mr. Herdman if this, indeed, was the testimony. It was my
23 recollection that that was pertaining to document --
24 Government's Exhibit 61 that was purportedly delivered to
25 Mr. Griffin by Mr. El-Hindi, not document 62.

1 MR. HERDMAN: My recollection is the testimony
2 was that Mr. Griffin was given the Ansar Jihad webpage from
3 Mr. El-Hindi on February 16th, and in fact, you can
4 actually hear this document printing out on Mr. El-Hindi's
5 computer.

6 MR. HARTMAN: And Judge, their expert testified
7 there was no evidence whatsoever that this page was visited
8 by Marwan El-Hindi's computer on the 16th. Whatever was
9 heard printing out it wasn't this. Their expert,
10 Mr. Corrigan, testified to that.

11 MR. HERDMAN: That is true.

12 THE COURT: Pardon?

13 MR. HERDMAN: That is true.

14 THE COURT: So what proof do you have that he was
15 mistaken?

16 MR. HERDMAN: If I may finish, Your Honor. I'm
17 going to link this all up, hopefully.

18 Can you bring up 77-1AD?

19 This document was obtained from Marwan El-Hindi's
20 Compaq laptop computer, and there was testimony on Friday
21 that the actual translations --

22 If you can put -- Kevin, if you can put Exhibit
23 62A on the left-hand side -- and 77-1AD-1 on the right-hand
24 side? And scroll down to the first page.

25 These are the translations, Your Honor, of both

1 those documents we just viewed. And I think if you
2 remember that there was testimony that the movies that are
3 listed on both these exhibits are -- they're duplicative in
4 certain spots. And I remind you that the document on the
5 right-hand side was actually dated January 3rd, 2006, I
6 believe, was the testimony of Mr. Corrigan, and the
7 document on the left was about a year prior to that. So it
8 looks like the one on the right is an updated version of
9 the same information that is in the Ansar Jihad webpage.

10 And on the right-hand side -- or actually on the
11 left-hand side, can you scroll down to the next page?
12 77-1AD-1.

13 Now, Your Honor, on this second page, this is the
14 translation of the Ansar Jihad webpage. You see there's a
15 movie called *Russian Hell Part One*. It's on the lower half
16 of that -- that document there. On February 16th, 2005,
17 all three defendants and Mr. Griffin go into one of Marwan
18 El-Hindi's rooms where they sit on a computer and they
19 watch certain videos. Mr. Kohlmann was able to determine
20 that *Russian Hell Part One* is actually playing in the
21 background of one of those segments on February 16th, 2005.

22 THE COURT: Because of what he could hear?

23 MR. HERDMAN: Yes, Your Honor. In addition,
24 there's computer evidence that *Russian Hell Part One* has
25 many different file names. One of the file names is

1 *Jahesteshm1.*

2 THE COURT: How do you spell that?

3 MR. HERDMAN: J-A-H-E-S-T-E-S-H-M, the digit one.

4 There's evidence on Mr. El-Hindi's computer that

5 *Jahesteshm1* was playing on February 16th, 2005. And

6 Mr. Kohlmann was able to acquire a copy of *Russian Hell*

7 *Part One* and match up about three minutes of that

8 particular video with what's going on in the background of

9 the February 16th discussion.

10 And I -- I actually have prepared data for The
11 Court. I wasn't able to get a copy of it until yesterday
12 so counsel hasn't seen it yet, but it's about -- the block
13 you want to play is about 3 minutes long. I'd be happy to
14 do that now.

15 THE COURT: No, that's okay. We'll wait.

16 MR. HERDMAN: In addition, Your Honor, you'll see
17 there's another video here called *Operation Mujahideen*
18 *Entering Dagestan*. In addition to *Russian Hell* video,
19 there's also evidence that there's a video called *Dagestan*,
20 D-A-G-E-S-T-A-N, 1 that was playing on Mr. El-Hindi's
21 computer about the same time that *Russian Hell* was playing,
22 although we weren't able to find that particular video.

23 THE COURT: The evidence being?

24 MR. HERDMAN: The evidence is the Real Player
25 history of Marwan El-Hindi's computer.

1 THE COURT: Okay.

2 MR. EL-KAMHAWEY: Your Honor, respectfully, what
3 is the government trying to achieve from all of --

4 THE COURT: We'll get to that in a moment.

5 MR. HERDMAN: And finally, Your Honor.

6 THE COURT: I assume, Mr. Herdman, you're headed
7 in that direction.

8 MR. HERDMAN: Yes -- well, just by way of
9 explanation. Obviously, there's proof that Mr. Griffin was
10 given a printout of that particular webpage on
11 February 16th. There's further proof that videos that can
12 be linked to from this webpage were, in fact, playing on
13 February 16th. And all three of the defendants were
14 present when one of these videos was playing and the actual
15 segment itself talks about the way that the Chechnyans are
16 attacking the Russian convoy, sort of tactics that are used
17 in attacking the convoy. So again, it's -- it's all tied
18 together in terms of the aims of the conspiracy, the intent
19 of the defendants, and the actual -- it correlates the
20 actual physical evidence in this case.

21 And finally, with respect to the Ansar Jihad
22 webpage. The Ansar Jihad webpage and the Muntada Al-Ansar
23 webpage and the Ekhlaas webpage, they all three experience
24 operational problems. They're taken offline at various
25 points in spring of 2005. And there are conversations

1 between and among the defendants where they talk about the
2 fact that these websites are no longer accessible, and they
3 talk about different ways to access the same information.
4 And in fact, Mr. Kohlmann, by reviewing the cookie history
5 on Marwan El-Hindi's computer was able to determine that in
6 early April of 2005, Mr. El-Hindi was accessing websites
7 that were substantially replicating what was available on
8 all three of these websites.

9 THE COURT: You say "substantially replicating,"
10 what do you mean?

11 MR. HERDMAN: For instance, the Muntada Al-Ansar
12 forum, when it went offline, the information that was
13 available on the Muntada Al-Ansar forum was taken wholesale
14 and placed onto another domain, what was called Inn4news,
15 I-N-N, the numeral four, news.

16 And there's evidence that Mr. El-Hindi went to
17 that website on April 2nd, 2005, along with two other
18 websites, each of which aimed -- because Muntada Al-Ansar,
19 Ansar Jihad, had been taken offline, people had put up
20 these other websites that had the same information that was
21 available on those Muntada Al Ansar or Ansar Jihad webpage
22 and put them online. And the defendants talk about how
23 they can't get onto certain websites, and there's some
24 discussion about how this one is closed, but there's
25 another website that's available that's open.

1 The next block of testimony deals with the
2 Islamic Army of Iraq -- and again, Your Honor, I'm going to
3 lead Mr. Kohlmann through this. He has -- he has a vast
4 knowledge of the Islamic Army of Iraq, but I'm going to
5 keep it very narrow and just have him, essentially, say
6 that he's familiar with this group, because it's defined on
7 our stipulations. I won't have him elaborate on that at
8 all. The only thing I'll have him do is have him state
9 that this particular group goes by the initials IAI and
10 that they run -- the group also ran at certain points in
11 2004 and 2005 -- and I think still today -- he doesn't need
12 to testify to that -- a mailing list. People can subscribe
13 to a mailing list, and they would be provided with updates
14 from the Islamic Army of Iraq. And that one of these --
15 one of these electronic mailing lists was run through Yahoo
16 Groups.

17 And go to Exhibit 73. And just focusing on the
18 address line on that e-mail.

19 Then I will direct Mr. Kohlmann's attention to
20 Exhibit 73. And you'll see, Your Honor, in the subject
21 line of this e-mail there's IAI Iraq in brackets. And that
22 signifies that this particular e-mail, at some point, was
23 sent to the IAI Yahoo group because it has in the subject
24 line the actual bracketed portion of that -- that is the
25 Yahoo group name for this particular group.

1 And if you go to Exhibits 79 and just focus in on
2 the -- one of the subject lines.

3 And then with respect to Exhibit 79, it would be
4 the same testimony, Your Honor, that there's -- actually,
5 there are two Yahoo groups that are implicated in this
6 subject line. Both of which Mr. Kohlmann subscribed to.
7 By the way, one of them is ALafghan-ALarab,
8 A-L-A-F-G-H-A-N, dash, A-L-A-R-A-B. Sorry about that. And
9 then the second would be the IAI Iraq, as well.

10 But I think the testimony will be with respect to
11 Mr. El-Hindi, that it was only apparent that he actually
12 subscribed to the IAI Iraq group. It looks like this
13 particular e-mail was forwarded from someone who subscribed
14 to the ALafghan-ALarab Yahoo group and then forwarded that
15 e-mail to the IAI Iraq group.

16 THE COURT: And then it went to Mr. El-Hindi?

17 MR. HERDMAN: And then it went to Mr. Griffin,
18 yes.

19 THE COURT: Via Mr.?

20 MR. HERDMAN: Mr. El-Hindi, yes, Your Honor. And
21 Mr. Sofer just reminded me, this is the subject of, I
22 believe, Count 4.

23 MR. HARTMAN: Six.

24 MR. HERDMAN: Count 6. Count 6 in the
25 indictment.

1 And then finally, Your Honor, the last block of
2 testimony deals with the Masada webpage.

3 If you'll bring up Exhibit 61, please. And this
4 is Exhibit 61. This is -- this is -- this is the -- an
5 actual printout from the Masada webpage. Mr. Kohlmann is
6 familiar with the Masada webpage. It's -- it's a
7 password-protected and registration-required webpage. If
8 you are subscriber to this webpage, you will -- you would
9 receive actual e-mail updates from the webpage. If there
10 was something posted that were new or if the webpage was
11 going to change locations -- and there will be some
12 testimony about the fact that, especially with respect to
13 this particular webpage in early 2005 what the former --
14 the further domain name of the Masada webpage,
15 ALM2-SDA.net. And in early 2005 that domain went down and
16 Masada had to move over to just a straight IP address,
17 that's the 66.148. That's visible on this actual printout
18 here on the bottom, left-hand corner. And Mr. Kohlmann can
19 testify that this webpage is, in fact, the same as at Al
20 Masada webpage that's spelled A-L-M-2-D-A. And this
21 particular webpage is described by Mr. Amawi. He gives the
22 domain to Mr. Amawi on April 13th 2005, and it's also
23 discussed specifically by Mr. El-Hindi, I think, on
24 February 8th, 2005. He says *Muntada Al Masada*, which is
25 the Masada forum. In addition, there's evidence from

1 Mr. El-Hindi's --

2 THE COURT: That was April 8th?

3 MR. HERDMAN: No. February 8th Mr. El-Hindi
4 talks about it. April 13th, Mr. Amawi talks about it.
5 There's further evidence in Mr. El-Hindi's computer that he
6 actually was a subscriber to this e-mail or this website
7 because he received an e-mail. There's a preserved inbox
8 in Mr. El-Hindi's computer that had an e-mail from Al
9 Masada.net, as well as some cookie history that would
10 indicate that he had visited this webpage as well.

11 And that, I think, is it, Your honor.

12 Mr. Sofer's -- well -- and obviously, with respect to
13 Mr. Kohlmann, the point all along, Your Honor, has been
14 that none of this would be clear without Mr. Kohlmann or
15 testimony with respect to these specific items.

16 And again, I've been as specific as I think I can
17 be pointed exhibits, pointed actual clips that we intend to
18 play. This is, by no means, going to be some sort of wide
19 ranging by Mr. Kohlmann; it's very narrow.

20 THE COURT: And the ultimate relevance and so
21 forth is related to, what?

22 MR. HERDMAN: It's related to all the -- all of
23 the defendants' intent, especially with respect to that
24 *Russian Hell* video and discussion. As well as the
25 existence of a conspiracy, the fact that --

1 THE COURT: It shows what was under discussion at
2 that time?

3 MR. HERDMAN: Correct.

4 THE COURT: As to that --

5 MR. HERDMAN: Correct. And well, and especially,
6 Your Honor --

7 THE COURT: -- the two items that were under
8 discussion --

9 MR. HERDMAN: Correct.

10 THE COURT: -- being viewed or at least being
11 played in their presence.

12 MR. HERDMAN: And also the fact that a it
13 corroborates to a great deal. It corroborates a great deal
14 of the physical evidence as it relates to Mr. Griffin, to
15 the extent that's at issue. There is a core objective
16 effect on Mr. Kohlmann's testimony, and I think the
17 government's entitled to offer that testimony with respect
18 to the physical evidence in this case.

19 THE COURT: Okay.

20 MR. HERDMAN: And Mr. Sofer, once again, reminds
21 me that this is also directly related to the actual
22 distribution of explosive information counts.

23 THE COURT: And the dispute about his accessing
24 the Al-Ekhlaas website, in light of their expert's
25 statement on cross-examination, how does that get resolved?

1 MR. HERDMAN: I guess I don't understand -- I
2 don't know what the actual dispute is with respect to that
3 exhibit. I'm not sure -- Mr. Hartman said on Friday he
4 wanted to voir dire Mr. Kohlmann. I think it was probably
5 based on the fact that what we had given as Exhibit 213
6 actually included some of Mr. Antoon's translation.

7 THE COURT: What I'm talking about is the
8 statement on cross-examination that there was --

9 If I misstate it, Mr. Hartman, tell me, please.

10 I remember the testimony, but that there was no
11 evidence, no computer evidence, no evidence that the
12 website had been accessed. What exactly did he say?

13 MR. HARTMAN: About Exhibit 61 and 62, that there
14 was no computer evidence that those were ever accessed
15 by -- on Mr. El-Hindi's computer.

16 THE COURT: And your response to that is?

17 MR. HERDMAN: With respect to Exhibit 61, Your
18 Honor, remember there was only Internet history that was
19 saved on Mr. El-Hindi's computer for one day on
20 February 6th of 2005. On February 6th, 2005 there was
21 evidence -- significant evidence, in fact, that
22 Mr. El-Hindi went to the Masada webpage, although not this
23 particular thread that is portrayed here in Exhibit 61. So
24 there is -- and there's also cookie evidence of that, and
25 there's also -- there's also some evidence that a file that

1 was accessible through the Masada webpage was viewed on
2 February 5th, 2005. So the government's issue is not that
3 there's no actual Internet history, browsing history that
4 Mr. El-Hindi went to --

5 THE COURT: But there is, however, indirect
6 circumstantial evidence.

7 MR. HERDMAN: Correct. And there's also indirect
8 evidence as to Exhibit 62, the Ansar Jihad webpage. Again,
9 there was no -- there was no Internet browsing history for
10 February 16th that was preserved. However, the Real Player
11 history indicates that videos that were accessible through
12 the Ansar Jihad webpage were viewed on Mr. El-Hindi's
13 computer on February 16th, as well as the fact that we
14 actually have a document, that a witness has testified to,
15 that this is printed off on February 16th and given to him
16 by Mr. El-Hindi, and it's dated February 16th.

17 MR. HARTMAN: That was printed off on the 16th.

18 MR. HERDMAN: Exhibit 62.

19 MR. HARTMAN: And their expert said that was not
20 visited on Mr. El-Hindi's computer. If a witness says this
21 was printed off on Mr. El-Hindi and given to him on
22 February 16th, it's directly contradicted by their own
23 expert.

24 THE COURT: I think that ultimately goes to the
25 weight, and I think they're entitled to look to the

1 evidence as most favorable to them and to build on that.
2 And if it's contradicted, then that's argument to the jury.

3 MR. HARTMAN: With all due respect to Your Honor,
4 I think the fact that they qualified him as an expert --

5 THE COURT: I agree. And --

6 MR. HARTMAN: Okay.

7 THE COURT: -- and admittedly, it was, quite
8 candidly, well done cross-examination. It was a smart and
9 straightforward kind of favorable answer to you, and you
10 sat down, and it hung there in midair. And that's
11 something that the government will have to deal with. Were
12 that -- were that preclusive because there was nothing else
13 in which they could base the testimony that they want to
14 offer, then fine, door will be closed. But that was the
15 question that I had coming in this morning. Let's find out
16 where directly relate the point to say, look, Judge, this
17 is what we have, and this is our foundation in effect for
18 the testimony.

19 MR. HARTMAN: Understood.

20 THE COURT: I'm inclined to let -- that's my
21 answer to that issue. Okay.

22 Now, your response, too.

23 MR. HARTMAN: My response is, I'd like about 30
24 seconds to talk to my computer expert.

25 THE COURT: No, that's fine. Sure, of course.

1 MR. HARTMAN: If I stumble a little bit, I
2 apologize. That's a lot to take in at once. But the first
3 thing, Exhibit 213, I indicated to the government and The
4 Court that I wanted to voir dire Mr. Kohlmann on exactly
5 what that was and how it came to be. Since then, we
6 received a different version of Exhibit 213 that has
7 different content on it that is not translated at all.
8 They're simply different content, and I would like to ask
9 Mr. Kohlmann about that as well, because of what we believe
10 Exhibit 213 to be, which is a cut and paste of a bulletin
11 board, and I don't think there's any evidence that it comes
12 from --

13 THE COURT: Okay. I'll let you --

14 MR. HARTMAN: Okay. I appreciate that. As I
15 recall, Your Honor was going to allow Mr. Kohlmann to
16 testify about things that wouldn't -- that would be
17 self-evident from the evidence and the video. The five
18 parts of the -- that Mr. Herdman said that Mr. Kohlmann was
19 going to testify about, first, was the Muntada Al-Ansar
20 website is -- just was going to testify about what it is
21 and it's the primary and initial distribution point for
22 Al-Qaeda in Iraq. And I believe, based on what Your Honor
23 said when we talked about this last, if they can't show
24 that the defendants knew that fact, then it's not relevant.
25 You said the collection of the videos itself was not

1 probative unless the defendants knew where it was coming
2 from and what it was. And I don't think there's any
3 evidence that they did know that this was, in fact, the
4 primary and initial distribution point for Al-Qaeda in
5 Iraq.

6 I think Your Honor used -- used the analogy, if I
7 go see a movie I like, it doesn't matter if Warner Brothers
8 made it or Fox, if you're not aware of that. The second
9 point --

10 THE COURT: That's as to that evidence or
11 testimony or are you moving on down the list?

12 MR. HARTMAN: I'm moving on down the list.

13 THE COURT: Okay. Go ahead.

14 MR. HARTMAN: The defendants do talk about -- at
15 some point, the government contends they talk about that
16 website, but before that's allowed -- Mr. Kohlmann's
17 allowed to testify in front of jury, I think Your Honor
18 should be satisfied that the conversation shows that they
19 know that it's the primary and initial distribution point
20 for IAI Iraq, because if the conversation they had doesn't
21 show that, then I don't think it's relevant. That's all I
22 have about that, if you'd like to hear from Mr. Herdman.

23 THE COURT: And I do recall having discussed that
24 view. So --

25 MR. HERDMAN: Which view, Your Honor?

1 THE COURT: Well, in terms of, so what if that's
2 what Al-Qaeda used as its distribution point? And even if
3 the defendants discuss that website and/or access it or
4 whatever, why do we tell the jury the nature of the
5 sponsors, if they don't know?

6 MR. HERDMAN: Mr. Amawi seems to know it, Your
7 Honor, and the way he seems to know it is that on
8 November 23rd of 2004, he plays a video and he says, This
9 is Al-Qaeda. And that actual video was released --
10 initially, it was only released on Muntada Al-Ansar forum,
11 which was about two weeks prior to when Mr. Amawi actually
12 viewed this video.

13 THE COURT: I do remember that.

14 MR. HERDMAN: And so there is -- there is some
15 evidence that --

16 THE COURT: Is that video -- is that one of the
17 video --

18 MR. HERDMAN: It was Exhibit 23. It's the video
19 of a white car driving down the road and --

20 THE COURT: I mean, was -- was that one of the
21 videos taken by Griffin?

22 MR. HERDMAN: No, it's not, Your Honor. It's an
23 audio and video recording. But I wouldn't say there is
24 actual video. There is a video captured by Mr. Griffin
25 who's wearing a video recorder that shows Mr. Amawi

1 navigating to the Muntada Al-Ansar webpage.

2 THE COURT: But it's your representation that the
3 evidence shows, at least to Mr. Amawi, while there's a
4 nexus between this particular webpage and Amawi's reference
5 to Al-Qaeda.

6 MR. HERDMAN: That's correct, Your Honor. What I
7 can do to put counsel and The Court at ease, I can save
8 that with respect to the nature of Muntada Al-Ansar, at
9 least with respect to the groups that used it as a primary
10 distribution points, I can save that until the very end so
11 you can see the actual evidence that establishes Mr. Amawi
12 and Mr. El-Hindi's knowledge of what this website is. And
13 then I can ask the question at the end of that block
14 of testimony.

15 THE COURT: Let me hear -- proceed, Mr. Bryan?

16 MR. BRYAN: Your Honor, whether or not you know
17 the movie was made by Fox or Warner Brothers isn't relevant
18 to you watching the movie either. And so I don't think
19 whether or not even the government has evidence that
20 Mr. Amawi knew that it was coming from Al-Qaeda is relevant
21 to the fact that he's watching a movie that he knows the
22 sources of the movie.

23 THE COURT: Fair question.

24 MR. HERDMAN: It's certainly not apparent to
25 Darren Griffin, based on your skills, that actual video is

1 in Arabic so Mr. Amawi can tell by the logo that's on there
2 that this is an Al-Qaeda in Iraq video and tells that to
3 Mr. Griffin by explanation, oh, this is an Al-Qaeda video.
4 And it's certainly relevant with respect to Mr. Amawi's
5 knowledge with what he was looking at and his intent in
6 actually pursuing these types of videos.

7 This isn't a video that was released by some --
8 by, for instance, Al Jazeera. This is a video that was
9 released directly from Al-Qaeda in Iraq.

10 MR. HARTMAN: But, Judge, the fact that he knew
11 that this video was from Al-Qaeda doesn't mean he knows
12 what the website is or why it was put up or who put it up.
13 And these videos are there to find. He watched the video.
14 If he talks about the video, they can play that transcript
15 for the jury to see what he said about the video. But it
16 doesn't mean that an expert should come in and say, well,
17 he talked about the video and it's from a website that was
18 put up for this -- by these people.

19 MR. WHITMER-RICH: And I would add that, you
20 know, the fact that Mr. Amawi says this is Al-Qaeda, we've
21 seen all these videos that have these logos on them, you
22 can tell when a video is an Al Jazeera video because it has
23 a logo on it of that, and they talk on the tapes about
24 Al-Qaeda logos and things, so that's evident from the
25 tapes. And then the fact that the logo is on the tape

1 shows that there's, you know -- the tape claims some
2 affiliation or the conduct on the tape is, you know,
3 purports to be an Al-Qaeda operation or something like
4 that.

5 THE COURT: And why is this redundant? I'm
6 concerned that the whole Al-Qaeda -- even though it's -- I
7 mean, first of all, as they point out, is in the case
8 already. It is evident as to some of those videos with the
9 particular logo, and why, as Mr. Hartman said, why don't we
10 just -- in closing argument, I assume you'll be showing the
11 clip and it's there. So why do we need Mr. Kohlmann to
12 tell us, by the way, folks, this stuff is collected and
13 distributed by Al-Qaeda?

14 MR. WHITMER-RICH: Well, we're missing a link in
15 order for the government to be able to make any kind of
16 argument based on the importance of when this video was
17 available. This is one particular video that there is
18 Mr. Amawi discussing -- Mr. Amawi provides this video to
19 Mr. Griffin. And this is -- again, this discussion's on
20 November 23rd, 2004 which is in very close proximity to the
21 actual release date of that video, and it's a suicide
22 bombing video that was only the second -- and
23 Mr. Kohlmann's not going to testify to this, this is just
24 for The Court's knowledge. It's only the second suicide
25 bomb video that was released by Al-Qaeda in Iraq, and the

1 only place it was released, on its initial release, I
2 believe, was November 7th of 2004 was the Muntada Al-Ansar
3 forum.

4 And the only question I'm going to ask
5 Mr. Kohlmann with respect to this video is what is that
6 video released on the Muntada Al-Ansar website in early
7 November of 2004. That's it.

8 MR. BRYAN: Your Honor, if I understand
9 correctly, immediately upon its release, it was picked up
10 by Al Jazeera and played by Al Jazeera.

11 THE COURT: You can ask Mr. Kohlmann whether he
12 knows whether that's so.

13 MR. BRYAN: To me, I'm not even sure it's a
14 relevant question. This timing aspect that, you know, he
15 has a video soon after it's released. Why is that relevant
16 to Mr. Amawi's intent?

17 THE COURT: Do we need to know in terms of --

18 MR. HERDMAN: Do I --

19 THE COURT: -- its availability elsewhere?

20 MR. HERDMAN: I think that that's -- that's an
21 overstatement at best. This entire video was never
22 played -- my understanding was never played on Al Jazeera
23 in its entirety. This was a video that shows a dead U.S.
24 Marine at the end of it. I don't think this entire thing
25 was played on Al Jazeera from start to finish. Portions of

1 it may have been. I don't know that.

2 But again, Your Honor, this goes back to the
3 website. The website's what's important here. The website
4 is something that was accessed by both Amawi and
5 Mr. El-Hindi and discussed between the two of them. They
6 talk about this particular website, and more importantly,
7 they talk about it in Arabic. So these aren't even
8 conversations that involve Mr. Griffin. He's there, he's
9 present, but there is Mr. Amawi and Mr. El-Hindi talking
10 about this particular website.

11 That's -- that's what I'm trying to get back to
12 here, is that this came from a particular website. That's
13 important to this case because that website was important
14 to both of these defendants, Mohammed Amawi and
15 Mr. El-Hindi.

16 MR. HARTMAN: And if that's he -- I mean, if
17 that's the allegation, I think The Court should look at
18 what the conversation was and the conversation was, hey,
19 this is the Muntada Al-Ansar, and it's what, IAI Iraq, and
20 it's what Al-Qaeda uses for their primary distribution
21 point. This is where we can get our videos for training,
22 then fine. I mean, if that's what they say. I don't think
23 that's what the evidence is going to show. And if -- and
24 if the --

25 THE COURT: Well, let's -- I do agree we'll put

1 this at the end, and before we -- we'll recess or whatever,
2 you know, let them show that to me and see --

3 MR. HERDMAN: I should caution The Court, of
4 course, they're never that explicit about this.

5 THE COURT: I understand. I think it's a fair
6 request.

7 MR. HERDMAN: I'm happy to do that. I can ask
8 the question at the end. It'll be something I can wait
9 until the end.

10 THE COURT: And as I say, I'll take a recess and
11 look at that. So let's put that on the one side to pick up
12 later.

13 MR. BRYAN: Your Honor, if I may, as it relates
14 to playing these clips, in general. These clips are in
15 evidence. These clips are already in evidence, Your Honor,
16 and I think -- and not only that, but some of these
17 clips -- as I was going through them with Mr. Amawi, some
18 of the clips are not even discussing the actual websites.
19 I think this is basically an effort just to rehash evidence
20 that's already in --

21 THE COURT: I disagree. I think that because --
22 and tell me if I'm wrong Mr. Herdman -- but the point of
23 this is to connect so that the jury knows what it is
24 Mr. Kohlmann's talking about. Simply saying it's flashing
25 on the screens --

1 MR. HERDMAN: Correct.

2 THE COURT: So the entire thing, if we sat
3 through the entire video --

4 MR. HERDMAN: And again, Your Honor, I've been --

5 THE COURT: I understand. That's fine.

6 MR. HERDMAN: I'm going to be very careful.

7 THE COURT: I'm overruling that objection.

8 MR. BRYAN: But as it relates to specific clips,
9 Your Honor, it's my understanding, by going through some of
10 these with Mr. Amawi, that some of these clips don't even
11 have a direct reference to these websites that Mr. Herdman
12 is alluding to. The one clip -- one of the earliest clips
13 is the EK2269185-1A1, actually begins with a mistranslation
14 which is coming back to haunt us again. And it has
15 Mr. Amawi, where he is most of this case, sitting in front
16 of his computer. He says, Have a seat, brother, I was
17 about to sign in to see the site -- is how the government's
18 transcript is. Our transcript says, I was about to sign in
19 to see this guy.

20 And then Mr. El-Hindi says, Which website is it?
21 And you hear Mr. Amawi typing on his keyboard. And then
22 Mr. Griffin starts talking about Mr. El-Hindi being a good
23 brother, and then they go on for quite a while. And
24 Mr. Amawi, basically, is on Paltalk at the same time as
25 having a conversation with Mr. El-Hindi and Mr. Griffin

1 about different types of software that they used to
2 navigate the Internet. But nowhere do they discuss --
3 they're talking about Skype and all these different types
4 of software that they use and Yahoo and MSN to navigate the
5 Internet, but nowhere did they specifically talk or chat --
6 or for chats and not for movies, actually, and nowhere did
7 they talk about -- and this goes on for several pages, Your
8 Honor.

9 This isn't a short clip, where they discuss
10 Muntada Al-Ansar, or whatever, but I think they believe
11 that since they're mistranslation says Mr. Amawi says, I
12 was about to get onto the, quote, site. That generically,
13 he was referring to one of these sites, but there's no
14 evidence in the clip that he's actually at one of the
15 sites. So I think there's some problems with some of the
16 clips that they've chosen to play. And I see this as
17 basically a way to be redundant and to reamplify certain
18 conversations that they think are -- are important to their
19 case.

20 Mr. Amawi acknowledges that some of the other
21 sites that they clearly are talking about Al Ansar, some of
22 these sites, and he's not disputing that fact. But
23 especially the first one that I pointed out, there's no
24 discussion of the site at all.

25 And then there's a discussion, Mr. Amawi and

1 Mr. Griffin, where he's apparently trying to register
2 Mr. Griffin so that Mr. Griffin can be a registered user
3 and somehow receive things off the particular sites. But
4 there's no evidence that Mr. -- although Mr. Amawi said he
5 was doing that for Mr. Griffin, there's no evidence that
6 Mr. Griffin actually became a registered user based upon
7 that and he started to receive -- and it also doesn't refer
8 to what website. He just talks about, you know,
9 registering him for a website. But the clip, itself,
10 doesn't say which website it is and -- in that.

11 But I think more important to that, it sorts of
12 leaves with you with this, Mr. Griffin was discussing being
13 registered to a website, and the government presented no
14 evidence that he, in fact, was. I think to the contrary,
15 this is just another example of Mr. Amawi pretending to do
16 something that he didn't actually do, which is lead
17 Mr. Griffin to believe that he was going to start receiving
18 a bunch of videos on his own so he didn't have to bug
19 Mr. Amawi for them.

20 So that's -- I mean, there's multiple concerns
21 that we have about the clips themselves. I just mention
22 those two. There's other clips that there just isn't any
23 mention of this specific website.

24 The clip beginning EK-48- -- EK-48-69185-3-A3,
25 it's a relatively short clip, but it begins with Darren

1 Griffin saying, So what do you want to know, what --

2 THE COURT REPORTER: Mr. Bryan, please slow down
3 when you're reading.

4 THE COURT: You better restate that because she
5 missed it.

6 MR. BRYAN: I apologize.

7 It begins with Mr. Griffin. He says, So what do
8 you want to know, what the --

9 Mr. Amawi said, You know, just to start knowing
10 how to make it.

11 Then there's an unintelligible response by
12 Mr. Griffin.

13 And then Mr. Amawi says, Just to know how to make
14 it.

15 And Mr. Griffin says, oh, the IED?

16 Mr. Amawi says, I mean, IDD.

17 Mr. Griffin says, Okay.

18 Mr. Amawi says, This is the new one. If you want
19 to add it, they just opened it today.

20 It doesn't mention the name of the website. He
21 just refers to, quote, if you want to add it, they just
22 opened it today.

23 Mr. Griffin says, Okay.

24 Mr. Amawi says, You see the number?

25 Mr. Griffin says, ah, it's the numbers --

1 laughs -- says, Whatever God wills. And then goes to
2 another page and says -- Mr. Griffin says, Brothers are so
3 smart. Do you have to be -- can anybody go in or do you
4 have to have a password?

5 And then Mr. Amawi says, We have it on record.

6 But the whole first part of that is them trying
7 to replay for the jury about Mr. Amawi asking Mr. Griffin
8 about making IEDs, and that has nothing to do with -- with
9 Mr. Amawi telling Mr. Griffin about this, quote, new
10 website.

11 And not only that, it doesn't say which website
12 it is, it doesn't say Al Ansar. I consider that a blatant
13 attempt on the Government's part to be playing negative
14 testimony concerning Mr. Amawi. Obviously, the IED
15 conversation has absolutely nothing to do with taking Mr.
16 Amawi or helping Mr. Griffin or talking to Mr. Griffin
17 about, quote, new one.

18 And if this is a new one, that doesn't even say
19 he's referring to a site necessarily. It just be -- this
20 is a new movie. This is a new video. They just opened
21 this video.

22 And again, we don't know -- I don't know why Evan
23 Kohlmann would need to hear that clip at all to testify.
24 So I -- I -- I don't want to call it dirty tricks, but I'm
25 having a tough time seeing how that IED conversation has

1 anything to do with Evan Kohlmann.

2 MR. HERDMAN: With respect to the segment that
3 Mr. Bryan was just referring to, this is one of those clips
4 where Mr. Griffin was wearing a video recorder, and the
5 reason that this particular clip is important is that
6 Mr. Amawi navigates to the Masada webpage, and you can
7 actually see it on the screen. Mr. Kohlmann is going to
8 testify that he recognizes that as a Masada webpage. And
9 that this -- if -- if you remember, Your Honor, there was
10 testimony from Mr. Corrigan that the Masada webpage was
11 added to Darren Griffin's web favorites on April 13th,
12 2005. And you can see it all unfold right on the computer
13 screen. Mr. Kohlmann is the witness who's capable of
14 saying actually what's on the screen. Right there on this
15 clip, that's the Masada webpage, that's what he's going to
16 testify to with respect to this particular segment.

17 And with respect to the segment Mr. Bryan
18 discussed first, I think it was the one dealing with, I was
19 about to sign in to this site. That's actually in English.
20 So it's not a translation issue. That's --

21 THE COURT: Transcription.

22 MR. BRYAN: -- transcription.

23 MR. HERDMAN: He said translation. I just want
24 to make that clear for The Court.

25 THE COURT: I understand.

1 MR. HERDMAN: And it is a longer clip. I think
2 it might actually be one of the longest ones. In fact,
3 throughout most of it, they are talking about Paltalk and
4 Skype, things that the government does not contend were
5 related at all to any of the Jihadist material. However,
6 at the end the Ansar -- Ansar.net website, which is the
7 Muntada Al-Ansar forum, is brought up at the end of that
8 conversation. But the beginning is important to the
9 government and the end of that conversation is important to
10 the government.

11 And what's in between, I think that's just right
12 for cross-examination for the defense counsel to go into
13 that, Skype and the Paltalk, but we're not contending this
14 instance that the Skype and Paltalk were somehow related to
15 what Mr. Kohlmann's going to testify to. It just happens
16 to be wedged in between the two portions of the
17 conversation that are important to the government. So it
18 wasn't done with any kind of nefarious purpose. It's just
19 in terms of presenting the entire conversation we had to
20 troll through the rest of that.

21 And I forgot what the other one that Mr. Bryan
22 brought up that I can respond to. What was the other clip
23 that you brought up?

24 Your Honor, I'm sorry, Mr. Sofer reminds me,
25 if -- if, again, with respect to several of these

1 conversations, it's a -- it's an involving conversation.
2 So this, on the particular date I was just discussing,
3 whether it is February 2nd, 2005, this is the first
4 instance where the -- the Muntada Al-Ansar forum is
5 discussed, but it's also discussed later on in the
6 conversation. The government intends to play those clips
7 as well. It helps put in perspective what's discussed
8 later in the conversation, the fact that this particular
9 site, as Mr. Amawi calls it, along with the Ansar.net web
10 address that's given in this segment, those are discussed
11 much more explicitly later on in the same conversation.

12 THE COURT: Okay.

13 MR. BRYAN: Your Honor, if I may very briefly, as
14 it relates to the beginning conversation between Mr. Amawi
15 and Mr. Griffin about Mr. Amawi asking Mr. Griffin
16 apparently how to make an IED, I -- Mr. Herdman never
17 responded to why that portion of the clip is relevant to --

18 THE COURT: Let's hear it.

19 MR. HERDMAN: Because they're sitting at the
20 computer, Your Honor, and Mr. Amawi's typing in, navigating
21 to the Masada webpage during the entire conversation. They
22 sit down -- they're sitting next to the laptop computer
23 together, and it's actually not what's being said -- they
24 do talk about a website, though, during that conversation
25 which is important, but far more important is the actual

1 video that's playing, or that's being recorded by
2 Mr. Griffin.

3 THE COURT: I understand.

4 MR. BRYAN: I just don't know why the video can't
5 start where Mr. Amawi says, This is a new one. If you want
6 to add it, I just opened it today.

7 THE COURT: Because that would eliminate a
8 portion of video that was being played?

9 MR. HERDMAN: Correct, it's the whole navigation
10 process.

11 THE COURT: I understand.

12 MR. BRYAN: And also Your Honor, just a general
13 objection to all of this, is that we're not disputing that
14 Mr. Amawi visited these websites. We're not disputing that
15 he knew about these websites. We're not disputing that the
16 source of these websites -- although I don't believe that
17 it's relevant for the jury to know that Al-Qaeda in Iraq
18 was using their websites as their distribution point and
19 all that kind of stuff. I think that has a tendency to
20 prejudice the process rather than provide assistance to the
21 jury. It's very clear that Al-Qaeda in Iraq were the --
22 were responsible for the -- a lot of videos that were
23 viewed in this case, just based upon the symbol.
24 Mr. Griffin himself even testified that this was a symbol
25 and Mr. Amawi taped saying this is from Al-Qaeda. So when

1 they bring in an expert to basically, I guess, put window
2 dressing around that testimony, I think it adds a sense of
3 importance that -- that the evidence doesn't deserve.

4 The fact that Mr. Amawi has the ability to
5 navigate these sites, in large measure, is due to his
6 ability to speak Arabic and that he's from that part of the
7 world where these sites are being created.

8 If Mr. Kohlmann is out -- allowed to emphasize,
9 basically, by the government, he's allowed to come in and
10 emphasize, again, that the producers of these videos and
11 everything else in how these videos made it onto the net, I
12 don't think that, clearly, is the reason why we sought
13 expert assistance to begin with, to be able to sort of
14 rebut that notion, to show that, at least in the Middle
15 East, in the Muslim communities in the Middle East, young
16 men like Mr. Amawi access this material very frequently,
17 and in great amounts, to put it all in perspective.

18 Sitting here in the United States with the jury
19 that's 100 percent American, none of them, if I recall
20 correctly, had any -- any experience at all with that at
21 least. It makes it sound like Mr. Amawi, Mr. El-Hindi and
22 everybody who looked at this stuff is somehow part of the
23 Al-Qaeda network.

24 THE COURT: I think you can ask Mr. Kohlmann
25 that. Say, look, gang, access to this stuff wasn't that

1 tough, was it? And in fact, at that time you gained
2 access, anybody can gain access. So I think that -- that's
3 how that point can be addressed.

4 MR. BRYAN: Well, I did reread the -- I did
5 reread the Daubert hearing transcript of Mr. Kohlmann where
6 I did ask him those exact questions, Your Honor. And
7 Mr. Kohlmann, I think, somewhat disingenuously made it seem
8 like it's next to impossible to access this stuff unless
9 you're a direct follower of Al-Qaeda or someone like him to
10 sign in to see a direct -- a direct video of Al-Qaeda.

11 THE COURT: That's not my --

12 MR. BRYAN: That's not a question I'm going to
13 ask Mr. Kohlmann because I have any confidence that he'll
14 answer the way that I believe that the true evidence is,
15 that these things are easily accessible, and it's --
16 they're commonly accessed in the Middle East. He's not
17 going to answer that question.

18 THE COURT: One of the reasons I made my initial
19 decision was because he said, contrary to the initial
20 impression I had about the difficulty to get some of this
21 stuff and kind the way that would evaporate all those
22 instantaneously once it was out there somewhere, quite
23 saying it would be up for a couple of weeks, or whatever.
24 Password protected means, simply, you've got to, quote,
25 register. Anybody can do that, he did it himself, and so

1 there was no real -- to that. And that I think -- that's
2 your call. And how you make that call, I don't think is --
3 should preclude the testimony.

4 MR. HARTMAN: Judge, I don't want to take much
5 more of your time.

6 THE COURT: That's okay. I get paid no matter
7 what I do. This is very important.

8 MR. HARTMAN: Well, as to the Ansar Jihad
9 webpage, I don't know -- which exhibit is that?

10 MR. HERDMAN: Sixty-two.

11 MR. HARTMAN: That was not password protected.
12 The links to the videos were password -- were password
13 protected. Those links didn't tell you where they were
14 going to take you. There's no evidence that any of those
15 links were clicked at all, so I don't think that he should
16 be able to testify that the links that appeared on the page
17 were password protected when nobody tried to go there
18 because the page itself wasn't password protected.

19 MR. HERDMAN: Well, first of all, Your Honor, the
20 page very clearly says, Click here to see this movie at the
21 top of the column there. Moreover, there is -- there is
22 evidence that these videos were accessed on February 16th,
23 2005 when we have a recording made with one of these videos
24 playing in the background.

25 THE COURT: Those two videos?

1 MR. HERDMAN: Only one of them you can hear
2 playing in the background. There is computer evidence that
3 at least two of the videos from this page were accessed on
4 that date.

5 THE COURT: Then the evidence is there.

6 MR. HARTMAN: I don't believe that's what the
7 evidence will show, but that's for argument. I understand
8 that. The -- I mean, for example, one of the things is the
9 *Russian Hell*, I mean, that was available in many different
10 formats under many different names, and, you know, just
11 because we're able to match up three minutes of that video
12 doesn't mean it came from a link that was clicked on this
13 website, because there was no testimony from an expert that
14 the link was clicked from this website, which I think is
15 very important, because that goes to the password issue.

16 THE COURT: Mr. Herdman?

17 MR. HERDMAN: Well, with respect to our expert's
18 testimony, Your Honor, he did testify there was no evidence
19 in the computer that this particular website had not been
20 visited, but he never said that he could confirm that it
21 wasn't visited, just that the browsing history, that date
22 doesn't exist anywhere. So --

23 THE COURT: This is the same circumstantial
24 evidence.

25 MR. HERDMAN: That's correct.

1 MR. HARTMAN: But -- so where does the evidence
2 come from that the videos were watched? Is that the Real
3 Player history?

4 MR. HERDMAN: The Real Player history which is
5 Exhibit 165-F-1.

6 MR. HARTMAN: I still don't think that's enough
7 to say these were taken from password-protected sites
8 because there's no evidence. Maybe they can argue that
9 there's just no evidence.

10 MR. HERDMAN: He's not -- he's not going to
11 testify that this particular video *Jahesteshml* came from a
12 password-protected website.

13 THE COURT: Okay.

14 MR. HARTMAN: As to Exhibit 73 --

15 Can you put 73 up on the screen, if you don't
16 mind?

17 Judge, this is -- this is a forward that somebody
18 put the subject line in, IAI Iraq, anybody can cut and
19 paste anything into a subject line. I don't think that
20 it's proper for Mr. Kohlmann to come in and say that, you
21 know, unless -- unless they can tie that HR Just Jeans
22 group to IAI Iraq specifically, I don't think it's proper
23 for them to say that this is a response from IAI Iraq,
24 unless they have evidence that they can specifically tie
25 those two together. Because it's not from IAI Iraq, it's

1 from this Just Jeans group. And unless they can, you
2 know -- do you understand what I'm saying?

3 THE COURT: I do.

4 MR. HERDMAN: And I think Mr. Hartman's actually
5 partially right about that. We would not seek to introduce
6 that this e-mail came from IAI Iraq. What it does
7 indicate, however, is that this was an e-mail that was sent
8 to that distribution, links the IAI Iraq Yahoo group of
9 which Mr. El-Hindi was apparently a subscriber to, because
10 he received this e-mail.

11 So this is to say, if you're a member of this
12 group, you can e-mail the whole group and say essentially
13 what's in this e-mail, which is about a jeans company,
14 okay, the actual content of the e-mail is not what's
15 significant here. What's significant is the subject line
16 which indicates that Mr. El-Hindi is a recipient of this
17 e-mail was a subscriber to the Islamic Army of Iraq's Yahoo
18 group.

19 MR. HARTMAN: And I don't think that's true. If
20 that was in the from line, that would be the case. That's
21 the subject line. You can put anything in the subject
22 line, from is the sender.

23 MR. HERDMAN: I think the testimony will be that
24 if -- if Jim was a subscriber to the Yahoo groups an he
25 e-mailed the entire Yahoo groups, and then e-mail was

1 received by Joe, that would indicate Jim was in the from
2 line, Joe would be in the to line, but the subject line
3 would indicate, in brackets, that the IAI Iraq group is
4 used to distribute this particular e-mail.

5 THE COURT: It's like forwarding something?

6 MR. HERDMAN: In a sense, yes.

7 THE COURT: I agree. I'm going to permit that
8 testimony.

9 MR. HARTMAN: Well -- okay.

10 THE COURT: And you've made your record, and if
11 there's a conviction I'm sure we'll hear in the
12 Sixth Circuit as to whether my decision represents a
13 partial retraction or repudiation of my earlier opinion is
14 correct.

15 MR. HARTMAN: Can -- can --

16 THE COURT: Because I think that nexus is being
17 established for what the evidence has developed during the
18 course of trial.

19 MR. HARTMAN: Can we put up Exhibit 79, please?

20 I understand what you're saying, Judge.

21 THE COURT: And I didn't have that during the
22 Daubert proceeding and when I wrote that opinion. I abide
23 by what I said -- much of what I said in that opinion about
24 the -- much of it -- his proposed opinions as not being
25 relevant to this case. It's been carved down and distilled

1 down, I have, substantially, according to what the
2 government tells me. And if it starts to ooze out of other
3 directions, I will contain it.

4 MR. HARTMAN: And I believe -- I believe you
5 will, Judge. I'm going to sit down after I just say that I
6 think it's very important that we be very careful because I
7 think it was, you know, it's -- it's what the defendants
8 said and did that establishes the crime, not -- not the
9 source of the material that they got. And -- and I mean, I
10 think it was Thurgood Marshall that said, If the First
11 Amendment means anything, it says that a state has no
12 business telling a man sitting in his own house what books
13 he can read and what films he can watch. It's the actions
14 and the speech of the defendants that matters.

15 THE COURT: I understand. But on the other hand,
16 I think that this, ultimately, is relevant on the issue of
17 intent. And I think that's what it's being offered for.

18 MR. HERDMAN: That's correct, Your Honor.

19 THE COURT: That, and I think that it is
20 relevant. I think we have enough of a nexus, and my desire
21 is to see to it that the evidence is contained and limited.
22 And Mr. Herdman has assured me that he has undertaken to
23 instruct Mr. Kohlmann, and Mr. Kohlmann wants to get loose
24 of the rains, I'm sure you will object. And if that's
25 what's happened, I will make very clear that it's not to

1 occur.

2 MR. HARTMAN: Thank you, Judge.

3 THE COURT: And I have ways of making clear to a
4 jury that I'm not happy with a witness.

5 MR. HERDMAN: My only response is I've had
6 extensive discussions with Mr. Kohlmann.

7 THE COURT: I know you have, and I know from what
8 you tell me, but I don't doubt that you have.

9 MR. HERDMAN: The only thing I can say is, I
10 can't predict what's going to be asked on
11 cross-examination, so just a note of caution, I don't know
12 what questions are going to be asked.

13 THE COURT: If they call for a yes or no answer,
14 that should do the trick or be a device to do the trick, if
15 necessary.

16 MR. BOSS: Judge, may I briefly revisit the
17 question about Exhibit 62? The government earlier
18 referenced that this document purportedly was printed out
19 in Mr. El-Hindi's house on February 16th, 2005 and handed
20 to Mr. Griffin. I did not recall that. I reviewed the
21 transcript clips as this -- this discussion has been
22 unfolding and found no reference to that. I'm wondering if
23 the government may direct me or my attention to wherein
24 those clips there seems to be evidence of that having
25 happened.

1 MR. HERDMAN: I believe it may be heard in the
2 clip I'm going play today, Your Honor. If not, it's -- I
3 can get that for Mr. Boss. It's either clip 15A, 16A, or
4 17A.

5 THE COURT: Okay.

6 MR. SOFER: But, Your Honor, Mr. Griffin also
7 testified, I believe, in the trial transcript that he
8 received that this document on or about February 16th from
9 Marwan El-Hindi.

10 THE COURT: That's my recollection.

11 MR. EL-KAMHAWEY: Your Honor, with regard to the
12 Exhibit 61, I just want to tell Your Honor the exchange
13 between Steve and Mr. Corrigan calls -- and despite the
14 fact whatever else you might have for on the computer --

15 THE COURT: Time out. You've got to rewind the
16 tape and a bit slower, please.

17 MR. EL-KAMHAWEY: Mr. Hartman asking
18 Mr. Corrigan: And the fact is, that despite whatever else
19 may have been on the computers, this URL is -- does not
20 exist anywhere on the computers that were examined that
21 were owned by Marwan El-Hindi; is that correct?

22 The answer: This specific thread, is that what
23 you mean? Yes. Did not --

24 Mr. Corrigan says, Did not appear on Internet
25 history.

1 Mr. Hartman follows up and says, And you examined
2 the Internet history?

3 And the answer was: Correct.

4 THE COURT: Okay. And that's there and that can
5 be argued to the jury. So -- that's my ruling on that
6 issue.

7 Mr. Ivey and Mr. Bryan?

8 MR. IVEY: Thank you, Your Honor. I just have
9 one, seeing is that The Court does seem inclined to allow
10 this testimony, my concern, particularly -- and since the
11 defense is going to be precluded from presenting expert
12 testimony to reflect some implications of Mr. Kohlmann's
13 testimony -- is that, particularly some of our less than
14 computer-savvy jurors get the impression from this, even
15 without being said, somehow, because it's difficult to get
16 these websites or links or whatever, and the defendants did
17 this somehow, they are members of Al-Qaeda or there's a
18 connection between Al-Qaeda and --

19 THE COURT: No. And if you want --

20 MR. IVEY: My request is simply that I think in
21 all fairness, since we can't call an expert to rebut, that
22 The Court instruct the jury that there is no such
23 connection between these defendants and --

24 THE COURT: You read my mind.

25 MR. IVEY: Thank you.

1 THE COURT: At the appropriate time, I'll remind,
2 say, I remind, ladies and gentlemen, that this is not a
3 case about Al-Qaeda. This is not a case where there's any
4 evidence that somehow either Al-Qaeda or terrorist group
5 sought out these individuals or in turn sought them out.
6 And I gather that's the instruction you'd like me to make.

7 MR. IVEY: Yes.

8 THE COURT: And I think, you know, and I will, if
9 I remember, I will say, I remind you because -- I think we
10 went into that, I think I explained that to all the jurors
11 during voir dire. In fact, that's my recollection. I
12 wanted to, and I think I have said that during the course
13 of the trial, and it's an entirely fair request.

14 MR. SOFER: And Judge, all the government would
15 ask is that you be precise about that instruction, because
16 I know, obviously, there's no allegation here that these
17 defendants were sought out by Al-Qaeda. We are not
18 alleging in any way that they interacted, communicated
19 with, or otherwise interacted with Al-Qaeda members or
20 leaders, per se. However, to say that there is no
21 connection between the defendants and Al-Qaeda is isn't
22 accurate. This is the connection between these defendants
23 and Al-Qaeda. They know it. They talk about it on the
24 tapes, and I'm not asking you to say that either. But
25 what -- what I just ask The Court is, to be precise about

1 that statement so that we don't overstate that either
2 because --

3 THE COURT: Why don't I say there's no
4 evidence -- I remind you that there's no evidence that
5 either Al-Qaeda or any other foreign terrorist group sought
6 out these defendants or that they, in turn, sought out any
7 such group?

8 MR. WHITMER-RICH: Or as Mr. Sofer said, there
9 was any communication between those groups. I mean, the
10 connection that they now --

11 THE COURT: That's fine. That's fine.

12 MR. WHITMER-RICH: The connection they now have
13 is the same connection that Mr. Kohlmann has to Al-Qaeda
14 and that many other people have to Al-Qaeda and that anyone
15 that visits any website has to -- it's not a meaningful
16 connection. So --

17 MR. BRYAN: And Your Honor, I may add, on behalf
18 of Mr. Amawi -- who wants me to say this for the record --
19 a lot of the clips that he saw for the first time, he
20 received even from Christians in his Paltalk.

21 THE COURT: Well, but that's --

22 MR. BRYAN: But during his Paltalk conversations
23 where they would send him a link about Muslim's, about
24 peace, or Islam, is about these, you know, with this, and
25 then they would send a link, maybe a beheading video that

1 was from Al-Qaeda in Iraq and Zarqawi's group and things
2 like that. So the fact that these individuals viewed these
3 videos, sir, and the fact that they discussed these
4 particular websites, I think is already in the record and
5 is relevant for whatever the government can argue, that it
6 goes to the defendant's intent, but the source of the
7 information, quite frankly, is completely irrelevant, and
8 that's, I believe, all Mr. Kohlmann's going to testify
9 about is that the source of this information is from these
10 various groups.

11 And I think this goes back to Your Honor's
12 original concerns about this, and I'm not sure, I thought
13 that this Evan Kohlmann thing became reconsidered by Your
14 Honor because of the issues concerning the El-Hindi team
15 and some of these specific exhibits and where these
16 exhibits were from and things like that. But it seems like
17 Your Honor's willingness to give the government this inch
18 is causing them to take several more inches in an effort to
19 bring in other stuff that Your Honor originally thought was
20 not relevant. So --

21 MR. HERDMAN: Again, Your Honor, I've stated this
22 I don't know how many times, but this is -- it's -- it's
23 important to the government to tie what Mr. Kohlmann's
24 going to testify to the audio specific exhibits, and
25 specific --

1 THE COURT: I understand and I agree. Provided
2 that's what happens, I will permit him to testimony. I
3 think the defendants have made a very full and complete
4 record, and the record is clear that I have withdrawn from
5 the opinion somewhat, to a slight extent, by no means
6 completely from the opinion that I wrote after the hearing
7 with Mr. Kohlmann. And I'm going to let him testify in a
8 way that I consider and view, and that the government
9 expects, will be narrow and focused and limited exclusively
10 to the evidence in this case. Okay?

11 MR. HERDMAN: Your Honor, before we proceed, just
12 two quick things. First, can I have an opportunity to
13 speak to Mr. Kohlmann just to kind of highlight some of the
14 things we talked about here?

15 THE COURT: Sure.

16 MR. HERDMAN: And secondly, we were going to make
17 Mr. Kohlmann available to The Court to discuss two of the
18 videos that were -- government offered into evidence last
19 week but The Court did not admit. Those videos feature
20 Mr. Amawi's mother. We were going to offer Mr. Kohlmann,
21 just by way of, essentially, voir dire with respect to
22 those particular exhibits. We were going to do that this
23 morning, but I realize we've pushed --

24 THE COURT: We'll do that at some point before he
25 leaves.

1 MR. HERDMAN: I just wanted to highlight that.

2 THE COURT: And Mr. Ivey, go ahead.

3 MR. IVEY: I just wanted to --

4 THE COURT: I do not propose to revisit that
5 ruling, by the way. I'm not going to permit that
6 testimony, the cell phone.

7 MR. IVEY: No. I -- I'm not going to be asking
8 you that. I just wanted as to -- I want to lobby, again,
9 for my no connection language because there is -- the
10 connection really isn't -- from the government's
11 prospective, there's a commonality of viewpoint but not
12 membership.

13 THE COURT: What I propose saying: Ladies and
14 gentlemen, I want to remind you that there's no evidence in
15 this case that Al-Qaeda or any other foreign terrorist
16 organization sought out or communicated with the
17 defendants, or in turn, any of them sought out or
18 communicated with any foreign terrorist organization. I
19 think that the record is -- and then each of you can argue
20 about the significance of watching videos, et cetera.

21 MR. IVEY: That sounds good.

22 THE COURT: And you were reading my mind in that
23 regard when you stood up. I think it's important that I do
24 that. I think I've -- okay.

25 And you wanted a few minutes?

1 MR. HERDMAN: If I could, Your Honor.

2 THE COURT: Why don't we take a very brief
3 recess?

4 MR. HARTMAN: I know you don't want to keep the
5 jury waiting any longer. If the government wants to begin
6 its testimony and then later on take a break and not
7 introduce 209 or 213, and then later at the break, we can
8 voir dire him on that if The Court prefers, that's fine.

9 MR. HERDMAN: I think that would work. I think I
10 have probably about at least 45 minutes of testimony before
11 we get to that point. So I'll stop before we get to it in
12 any event.

13 THE COURT: Yeah. Okay. About 15 minutes, you
14 think?

15 MR. HERDMAN: That's more than enough.

16 THE COURT: As soon as you can.

17 (Jury entered the courtroom.)

18 THE COURT: As always, thank you for your
19 patience. We've had a number of things we've been working
20 on since shortly after 8:00 this morning. I thought we'd
21 be ready to go by now, and we just completed the work in
22 that regard so here we are.

23 Your next witness is?

24 MR. HERDMAN: Your Honor, United States calls
25 Evan Kohlmann.

1 THE COURT: Okay. If you'll swear the witness,
2 please.

3 || EVAN F. KOHLMANN,

4 Was herein, called as if upon examination, was
5 first duly sworn, as hereinafter certified, and said as
6 follows:

7 THE COURT: You may be seated.

THE WITNESS: Thank you, Your Honor.

9 THE COURT: Will you tell the ladies and
10 gentlemen your name, please?

11 THE WITNESS: Yes, Your Honor. My name is Evan
12 F. Kohlmann, K-O-H-L-M-A-N-N.

13 THE COURT: And Mr. Kohlmann, your community of
14 residence?

15 THE WITNESS: I'm based in New York City.

16 THE COURT: And is that where you work as well?

17 THE WITNESS: That's correct, yes.

18 THE COURT: And how old are you?

19 THE WITNESS: I am 29 years old.

THE COURT: And do you have coll

21 THE WITNESS: Yes, Your Honor, I do.

THE COURT: And what -- where and wh

23 major areas of study?

24 THE WITNESS: I have an undergraduate degree from
25 the Edmund A. Walsh School of Foreign Service at Georgetown

1 University in Washington, D.C. My main degree from
2 Georgetown was in international politics. I also have a
3 certificate from the Center for Muslim Christian
4 Understanding from CMCO, the Georgetown University, a
5 certificate is in Islam and Muslim Christian understanding.

6 THE COURT: Okay. And it is my understanding
7 that from a period of time you have been interested in and
8 have accessed websites relating to various kinds of
9 terrorist organizations and insurgency groups and their
10 activities; is that correct?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: And when did that start?

13 THE WITNESS: I started studying this in
14 approximately 1998.

15 THE COURT: And were you in high school at that
16 time?

17 THE WITNESS: No. No, Your Honor. I was
18 actually at college in Georgetown University.

19 THE COURT: Ten years, okay. That's fine.
20 And -- okay. Excuse me, just one other question. Do you
21 speak Arabic?

22 THE WITNESS: I don't speak it fluent, Your
23 Honor, no.

24 THE COURT: Can you read Arabic?

25 THE WITNESS: I can read some characters, but my

1 understanding of Arabic is primarily based on audio or
2 oral. I have listened to many audiotapes and videotapes,
3 and I've spent time with many Arabic speakers. I can read
4 translated Arabic as in Arabic characters when they're put
5 into Arabic characters, but I have trouble reading the --

6 THE COURT: The script?

7 THE WITNESS: Yes, I guess you could say I'm a
8 student of Arabic.

9 THE COURT: Primarily self-taught?

10 THE WITNESS: No. Primarily the Arabic that was
11 taught to me at the Center for Arabic and Christian
12 Understanding, the Center of Arts is the one at Georgetown.

13 THE COURT: And you have continued to develop
14 your familiarity and understanding of the Internet and
15 what's available out there relative to terrorism,
16 terroristic groups?

17 THE WITNESS: That's correct, Your Honor.

18 THE COURT: Is that principally or primarily what
19 you do and --

20 THE WITNESS: That's a large part of what I do.
21 I study communications, recruitment, and financing of
22 terrorist organizations, so a large part of that has to do
23 with the Internet.

24 THE COURT: How is that activity supported
25 financially?

1 THE WITNESS: How is terrorist activity
2 supported?

3 THE COURT: No, your work.

4 THE WITNESS: My activities are supported, number
5 one, because I work for a non-profit foundation known as
6 the 9-11 Finding Answers Foundation, NEFA. I also work for
7 NBC News, MSNBC as an on-air analyst, and I guess you'd
8 call it a source of information for their stories. I also
9 work on behalf of various international governments, law
10 enforcement agencies, and others, even private clients. I
11 provide consulting services with regards to background
12 information, again, regarding communication, financing, and
13 recruitment by international terrorist organizations.

14 THE COURT: As you understand your testimony
15 your -- what you learn and what you believe, correct?

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: And ladies and gentlemen, in a
18 moment, Mr. Herdman will question Mr. Kohlmann, but I want
19 to remind you -- and I think I did this earlier as when we
20 first met one another during voir dire -- I think I tried
21 to express to you that there would be no evidence in this
22 case and there -- it still is and I expect will be -- that
23 Al-Qaeda or any other foreign terrorist organization -- and
24 I expect Mr. Kohlmann may refer to some of those in his
25 testimony -- but I want to remind you and emphasize to you

1 that there's no evidence that any of these defendants
2 sought out, communicated with any such organization, or on
3 the other hand, that any such organization sought them out
4 or undertook to communicate with them at any time
5 whatsoever. And please keep that in mind, not only
6 throughout the course of the trial, but also this morning,
7 and perhaps even this afternoon when Mr. Kohlmann's
8 testifying.

9 Mr. Herdman, you may proceed?

10 DIRECT EXAMINATION

11 BY MR. HERDMAN:

12 Q. Good morning, Mr. Kohlmann.

13 A. Thank you.

14 Q. I just noticed I don't know if it's the New
15 Yorker or what it is, but you have a tendency to speak very
16 quickly, so I just ask you to be conscious of that, and I
17 may have to stop you at certain points if you speak too
18 quickly.

19 A. Please do.

20 MR. HERDMAN: Kevin, could you put up Exhibit
21 172?

22 BY MR. HERDMAN:

23 Q. Mr. Kohlmann, do you recognize what's on the
24 screen there?

25 A. There's a copy of my resume.

1 Q. I know you told Judge Carr about a little bit
2 about your educational background. With respect to --

3 MR. HERDMAN: Kevin can you focus on the area at
4 the top that says, Education there?

5 BY MR. HERDMAN:

6 Q. And then just quickly here, with respect to your
7 undergraduate work at Georgetown, did you -- did you focus
8 on any particular topics while you were a student at
9 Georgetown?

10 A. Yes, I focused largely on dissident movements in
11 the Muslim world, particularly modern dissident movements
12 in Afghanistan, Saudi Arabia, and North Africa, primarily
13 groups that were based on Islam or their organization or
14 ideology is based on Islam.

15 Q. I may be missing a couple of words that I'm
16 saying. If I don't do this, I know Judge Carr will, so if
17 you point the microphone right at your mouth?

18 A. No problem.

19 Q. Did you say "dissident movements"?

20 A. Yes, dissident, as in groups that seek to oppose
21 governments or seek to overthrow governments in the region.
22 I was studying the reasons for those -- their -- their
23 interest in overthrowing those governments, the history of
24 those countries, the history of movements themselves, the
25 people that run these organizations that have founded these

1 organizations, and what other goals these organizations and
2 groups might have.

3 Q. And did you focus on any particular area of the
4 world in your undergraduate work?

5 A. Yes, my -- my undergraduate work is almost
6 absolutely focused on the Muslim world, primarily, again,
7 North Africa, Persian Gulf, Afghanistan, particular areas
8 where we had what are known as "Mujahideen," which are holy
9 movements of holy warriors, people that consider themselves
10 the Muslim holy warriors.

11 MR. HARTMAN: Objection, Judge. I think we've
12 stipulated to a definition. I just don't want to confuse.

13 THE COURT: I think that's correct. In other
14 words, ladies and gentlemen --

15 Thank you, Mr. Hartman.

16 I remind you that you've been provided with a
17 definition of the term "Jihad" that you are to use in your
18 deliberations and anything inconsistent that you may hear
19 with that term throughout the case is to be disregarded by
20 you.

21 Go ahead.

22 BY MR. HERDMAN:

23 Q. Mr. Kohlmann, and you received a certificate
24 while you were at Georgetown University?

25 A. Yes, I did.

1 Q. And that was in -- at the center for Muslim
2 Christian and Understanding, you received that certificate?

3 A. That's correct.

4 Q. Okay. Then you went to law school after you were
5 done at Georgetown?

6 A. That's correct.

7 Q. All right. By the way, while you were at
8 Georgetown, did you complete any longer written papers,
9 "thesis," as they're called?

10 A. Yes, I applied and wrote a honors thesis on the
11 subject of the Arab Afghans in Afghanistan, in other words,
12 individuals who had gone from outside countries to fight in
13 Afghanistan. I also wrote another paper, a --

14 THE COURT: A little slower Mr. Kohlmann.

15 THE WITNESS: Excuse me, Your Honor.

16 A. I also wrote a paper titled "The Bitter Harvest,"
17 which analyzed the Soviet invasion of Afghanistan during
18 the 1980s analyzing how that invasion had led to the
19 subsequent rise of the Taliban movement in Afghanistan.

20 I also wrote another thesis for my CMCU work, at
21 the Center for Muslim Christian Understanding, my thesis
22 for the CMCU was on early religious and political modern
23 sayings in the 20th century Afghanistan. So in other
24 words, I was basically doing most of my paperwork on,
25 again, Afghanistan, the Persian Gulf, North Africa.

1 Q. While you -- okay, so then you finished
2 Georgetown and went to University of Pennsylvania Law
3 School?

4 A. That's right.

5 Q. And you received a law degree there?

6 A. That's correct.

7 Q. And did you -- did you take any graduate -- or
8 continue your -- did you continue your interest in
9 Afghanistan at that point?

10 A. Yes, I did. Yes, I did, sorry.

11 Q. I'd like to direct your attention now --

12 MR. HERDMAN: If we can go back out, Kevin, to
13 your work experience? If you could -- Kevin, if you could
14 focus on -- not there, but at the bottom, the -- The
15 Investigative Project?

16 BY MR. HERDMAN:

17 Q. While you were a student at Georgetown, did you
18 work for an organization called The Investigative Project?

19 A. Yes, I did.

20 Q. And can you just briefly describe for the jury
21 what The Investigative Project is?

22 A. Yes, The Investigative Project is a
23 counterterrorism research think tank, or an organization
24 that conducts research in terrorism, terrorist groups,
25 terrorist financing, which was found in 1995 by a former

1 CNN journalist. It's a non-profit organization. The
2 purpose is to promote non-profit counterterrorism research.

3 Q. You said you were a seen or terrorism consultant.
4 You didn't start off as a senior terrorism consultant?

5 A. No. I worked for them for a number of years.

6 Q. That was your title when you left The
7 Investigative Project?

8 A. That was my last title, yes.

9 Q. What did you do -- in order to complete your
10 research at The Investigative Project, what was the process
11 that you went through in order to collect or analyze the
12 information?

13 A. Well, our research was really based on what are
14 known as "open sources." And "open sources" are material
15 that is not classified. In other words, we weren't looking
16 for intelligence reports, we weren't looking for classified
17 information. What we were looking to find is information
18 that's out there, in general -- it's out there and can be
19 gotten at, in other words, interviews with particular
20 individuals, open interviews, video recordings, audio
21 recordings, the kind of material that, if you're diligent
22 enough to research and find it, it's there to be found, but
23 it's not classified.

24 So what we would do is take different pieces of
25 information from different open sources, be it interviews

1 with particular individuals, be it video recordings, audio
2 recordings, even going into secondary sources like
3 magazines and reports by other academics, and we would take
4 this information and then try to distill it down into
5 memorandum, documents, analyzing particular aspects of
6 terrorist financing, terrorist recruitment, and then
7 preparing these documents for others to read.

8 Q. And what were those others that you prepared the
9 documents for?

10 A. It was primarily for academics, policy makers and
11 law enforcement.

12 Q. While you were -- one of the ways that you
13 collected this information with respect to these groups,
14 did you use the Internet at all in collecting that
15 information?

16 A. Yes, one -- I mean, being a relatively young
17 person, one of the main areas that I found that was
18 unexplored and that had a lot of information to be
19 exploited in this area, particularly with regards to open
20 source information, was the Internet.

21 Q. And were you -- at some point in time, you left
22 The Investigative Project?

23 A. That's correct.

24 Q. And what have you been doing since you left The
25 Investigative Project?

1 A. I've been working as a private counterterrorism
2 consultant, again, on behalf of academics, policy makers,
3 law enforcement, and others.

4 Q. You mentioned to Judge Carr that you're a
5 consultant with the 9-11 Finding Answers Foundation?

6 A. That's correct.

7 Q. Can you just briefly describe what that
8 particular organization is?

9 A. Yes, the NEFA Foundation was started after 2001
10 with the hopes of providing a venue for nonprofit
11 counterterrorism research, again, similar to the kind of
12 work that I had done previously, only this is very very
13 focused here on areas that are particularly important to
14 the United States government and other governments who are
15 engaged right now in a campaign, in a military and
16 political campaign.

17 The purpose of this is to provide, again, the
18 actual information, raw information that policymakers and
19 academics and others lack so that informed decisions can be
20 made based upon the real information, the true facts that
21 are on the ground directly from the people that are making
22 these facts.

23 Q. Do you continue to use the Internet as a research
24 tool in your work for the 9-11 Finding Answers Foundation?

25 A. Yes.

1 Q. And do you provide any consulting to any
2 private-sector clients?

3 A. Yes.

4 Q. Can you just describe generally what kind of
5 private-sector clients we're talking about here?

6 A. I have done consulting work on behalf of private
7 law firms. I'm currently engaged in a year-long project on
8 behalf of the RAND Corporation, R-A-N-D, in California.
9 It's writing several -- a series of papers for them based
10 upon my analysis of particular events going on in Iraq and
11 Afghanistan and North Africa.

12 I've done work for a variety of different --

13 Q. Have you offered opinion testimony in any civil
14 cases?

15 A. Yes.

16 Q. What about law enforcement? You mentioned that
17 you work with certain law enforcement entities. Can you
18 name some of those organizations?

19 A. Yes, I have worked on a consistent basis with
20 Scotland Yard, SO15 Counterterrorism Command, the Federal
21 Bureau of Investigation, the Australian Federal Police, the
22 Office of the High Representative in Bosnia-Herzegovina,
23 and the United Nations, a variety of different law
24 enforcement and security apparatus around the world.

25 Q. If I can direct your attention to this portion of

1 your resume here it says, Founder president
2 globalterroralert.com?

3 A. Uh-huh.

4 Q. And can you just briefly describe for the jury
5 what that -- that is.

6 A. Sure. In January of 2004 after I left The
7 Investigative Project, I founded this website in order to
8 serve as an information clearinghouse. I felt that the
9 real facts about terrorism, the real information that was
10 critical for people to be making decisions upon was not out
11 there. It wasn't being seen or read by the people who
12 needed to see it. So the purpose of starting this website
13 was, again, to form an information clearinghouse for
14 information, key information, the raw information for
15 academics, policymakers, and others with a specific
16 interest in counterterrorism.

17 Q. Now, have you personally been featured in any
18 videos or any documents that have been produced by foreign
19 terrorist organizations?

20 A. Yes, I have.

21 Q. Can you give an example of one of those to the
22 jury?

23 A. Yes. Recently Al-Qaeda's official media released
24 a video of the deputy commander of Al-Qaeda, an individual
25 who goes by the name Dr. Ayman Al-Zawahari,

1 Z-A-W-A-H-A-R-I, Dr. Al Zawahari in this video recording
2 was addressing the purpose of Al-Qaeda in releasing
3 particular video recordings.

4 MR. HARTMAN: Objection.

5 THE COURT: I agree. I don't think that's
6 relevant. Jury will disregard that.

7 MR. HERDMAN: Your Honor, may I approach briefly
8 on this issue?

9 (A sidebar conference was had on the
10 record.)

11 MR. HERDMAN: Your Honor, I understand the basis
12 for the objection. I understand you're sustaining the
13 objection. I think the issue I'm trying to get at here is
14 that Mr. Kohlmann has been cited by Al-Qaeda, itself, as an
15 expert of sorts and --

16 THE COURT: I don't think so. I don't think so.

17 MR. HERDMAN: Okay.

18 THE COURT: All right.

19 (Sidebar conference concluded.)

20 THE COURT: Okay. I sustained the objection.

21 The prior question as previously said to jury.

22 You may continue.

23

24 BY MR. HERDMAN:

25 Q. I believe you stated earlier, Mr. Kohlmann,

1 you're also a consultant to NBC News?

2 A. That's correct.

3 Q. What kind of services do you provide to NBC News?

4 A. I do two different things. First of all, I
5 provide on-air analysis on both NBC Nightly News, and also
6 MSNBC, with regard to various terrorism issues. I also
7 provide NBC with access to the raw information that goes
8 into their stories about terrorism. In other words, if
9 they do a particular story about a terrorist organization,
10 I will provide a video for that organization, I will
11 provide them background about that organization. I will
12 tell them the history of that organization. Sometimes I
13 can even provide them exclusive information that no one
14 else has about a particular terrorist group or a terrorist
15 cell, and then that goes into a production for a story.

16 Q. Now, with respect to this particular case, do you
17 remember how long you've been retained as a consultant in
18 this case?

19 A. Yes, approximately early 2006.

20 Q. And do you have any video, computer files, or
21 other documents that you reviewed in connection with this
22 particular case?

23 A. It's a significant number. It's in the
24 thousands.

25 Q. And do you have any idea actual hours of work

1 you've put into this particular case?

2 A. It's many hours. It's been -- it's been quite a
3 job.

4 Q. Have you -- for your work provided as a
5 consultant in this case thus far, have you received any
6 payment from the United States?

7 A. Yes, I have.

8 Q. Do you know approximately how much?

9 A. I believe so far over the space of two years,
10 I've gotten paid approximately \$49,000.

11 Q. I want to direct your attention now to some field
12 experience that you've conducted. Have you ever
13 interviewed actual terrorist recruiters or facilitators?

14 A. Yes, I have.

15 Q. And maybe we'll just pick one, Sheikh Abu Hamza
16 Al-Masri, who is that individual?

17 A. Sheikh Abu Hamza Al-Masri is currently in prison
18 in the United Kingdom. He was convicted under the United
19 Kingdom Terrorist Act about a year ago. Sheikh Abu Hamza
20 Al-Masri is a former -- the Finsbury Park, F-I-N-S-B-U-R-Y,
21 Mosque in London, and Sheikh Abu Hamza Al-Masri has been
22 associated with such individuals as Zacarias Moussaoui,
23 who's allegedly involved in the 9-11 conspiracy.

24 MR. HARTMAN: Objection.

25 THE COURT: I'm not sure we need to go into all

1 this in terms of the testimony that I expected to be
2 offering today. I'm going to instruct the jury to
3 disregard that.

4 MR. HERDMAN: I'll just ask a very pointed
5 question, Your Honor, with respect to interviews.

6 THE COURT: Okay.

7 BY MR. HERDMAN:

8 Q. Have you, in fact, done field interviews of
9 individuals who might have been convicted of terrorism
10 crimes or are suspected of some terrorism crime?

11 A. Yes.

12 Q. Is that both abroad and in the United States?

13 A. Yes.

14 Q. What about -- have you conducted any interviews
15 exclusively over the Internet with certain terrorist and
16 terrorist facilitators?

17 A. Yes.

18 Q. And is that part of your ongoing research into
19 this field?

20 A. Yes.

21 Q. Have you conduct the any interviews with family
22 members of terrorists or individuals who executed suicide
23 attacks?

24 A. Yes.

25 Q. Okay. And what -- just very briefly, what was

1 the purpose of your interviews with all of these particular
2 individuals?

3 A. To try to get all of the facts, to try to get all
4 of the facts together. The most comprehensive picture of
5 the kind of information that I was looking.

6 Q. And have you conducted any field -- field work in
7 Bosnia-Herzegovina?

8 A. Yes.

9 MR. HERDMAN: And I'm going to move onto -- if
10 you can go to the third page of this document. Okay.

11 BY MR. HERDMAN:

12 Q. In addition to your work as a consultant, do you
13 also publish various academic works or journals or
14 articles?

15 A. Yes.

16 Q. Have you written any books?

17 A. Yes.

18 Q. What's the title of it your book?

19 A. Al-Qaeda -- *Al-Qaeda's Jihad in Europe - The*
20 *Afghan-Bosnian Network*.

21 Q. When was that book published?

22 A. That was published in September of 2004?

23 Q. Who's the primary audience for that particular
24 book?

25 A. It's a pretty thick book. The primary audience

1 is academics, law enforcement. People with a very specific
2 interest in the very highly detailed facts of this
3 situation.

4 Q. If I can direct your attention to the screen, I
5 see it's used as a text in certain courses?

6 A. Yeah, it's not -- it's not a common interest
7 book. It's more like it's a book for universities and
8 college classes.

9 Q. And it's -- I see here Kennedy School of
10 Government at Harvard and the School of Advanced
11 International Studies at John's Hopkins University, that's
12 your course -- or your book is used in courses at those
13 schools?

14 A. That's correct, yes.

15 Q. Has this book been cited in any particular
16 government publications?

17 A. Yes, it has.

18 Q. And which one was that?

19 A. The final report of the bipartisan Congressional
20 9-11 Commission.

21 Q. With respect -- with respect to articles or
22 papers that you published -- direct your attention to this
23 portion of your CV here -- can you just estimate
24 approximately how many papers or articles you've actually
25 published on certain topics?

1 A. Many. I mean, I write -- primarily, right now I
2 write longer, scholarly-style pieces for journals like
3 *Foreign Affairs*. However, I also write blogs, I also
4 sometimes write editorials. There's numerous, numerous
5 documents, not to mention the fact that some of the papers
6 that I work are not for public dissemination. They're for
7 private dissemination. I would say in a given year, I
8 write anywhere between ten to 15 papers.

9 Q. And I see you mentioned *Foreign Affairs*. I see
10 here you published an article in *Foreign Affairs*?

11 A. That's correct, yes.

12 Q. What is *Foreign Affairs*, by the way?

13 A. *Foreign Affairs* is the official journal of the
14 Counsel on Foreign Relations, CFR, which is another
15 organization that promotes international studies and
16 international relations.

17 Q. And I see you've published in a journal called
18 *The Sentinel*?

19 A. That's correct.

20 Q. What -- who published *The Sentinel*?

21 A. *The Sentinel* is the official journal of West
22 Point -- excuse me, it's the official publication of the
23 West Point Combating Terrorism Center, which is in the U.S.
24 Military Academy at West Point.

25 Q. And do some of your articles or papers that

1 you've published, do they deal with the use of the Internet
2 by specific terrorist groups?

3 A. Yes, they do.

4 Q. What about conferences, do you attend conferences
5 on a regular basis?

6 A. Yes.

7 Q. And most recently, did you just attend a couple
8 in Washington, D.C.?

9 A. I just attended two back-to-back in Washington,
10 D.C., yes.

11 Q. What was the focus of those particular
12 conferences?

13 A. The focus of those conferences were U.S.
14 government intelligence -- U.S. -- excuse me, U.S.
15 government intelligence agencies bringing together small
16 groups of academics to discuss particular issues which are
17 of immediate importance to what the United States
18 government is doing.

19 Q. And finally, with respect to this area, have you
20 published any testimony that was presented to the United
21 States Congress?

22 A. Yes.

23 Q. And just -- if you can explain it to the jury
24 what's the difference between writing testimony and
25 actually going in and testifying at Congress?

1 A. I co-authored testimony with a colleague of mine
2 from The Investigative Project back in 2003 on particular
3 ways that terrorists were working banks and charities to
4 finance themselves. It was my colleague who actually went
5 to the Congress and presented it; however, it's
6 co-authored, my name is on the document. We wrote the
7 document together.

8 Q. I'd like to talk a little bit about the actual
9 research methodology that you employ. Specifically, with
10 respect to your use of the Internet, can you briefly
11 describe for the jury how it is that you go about
12 researching and utilizing information that you collect off
13 the Internet?

14 A. Yeah. Essentially, what I do is I -- first of
15 all, I track websites, particular organizations. Now for
16 me, I'm interested in getting insurgent or terrorist
17 organizations. The first thing I look to see if -- does
18 this organizations have an official website. Do they have
19 an official e-mail address, an official mailing address?
20 If they do, what I will do is, first of all, download
21 copies of that website, study it, translate it. I will
22 subscribe to their mailing list so that if they send out
23 e-mail blasts, I will receive all their latest news in my
24 own e-mail box. Sometimes I will contact them by e-mail to
25 see what the response is, to see what they're looking for,

1 to see what their goals are. But sometimes organizations,
2 particularly like Al-Qaeda, doesn't have its own official
3 website, doesn't have its own official AlQaeda.com. So
4 what these organizations do is, they collectively put all
5 their stuff together into one shared website, which is
6 usually designed like a forum, a chat forum.

7 Q. Mr. Kohlmann, I'm going to stop you right there.

8 A. Excuse me, sorry.

9 Q. When you go to these particular sites or forums,
10 what is the kind of material that you're checking as a
11 researcher?

12 A. I am collecting primarily video recordings, audio
13 recordings, text communiques, and magazines. These are the
14 four most common pieces of multimedia you will encounter on
15 the Internet relating to terrorist organizations.

16 Q. After you've collected this stuff, these
17 documents or videos or audios, what do you actually do with
18 those files?

19 A. I save all these files into a database. I save
20 each file in a very specific main format by date, by
21 source, by rough subject title. And then if it comes from
22 a particular Internet forum where a webpage has a numeric
23 ID, a unique numeric, almost like a telephone number, I
24 save that number as well, so if I ever need to recall this
25 file, not just for my own data, but if I need to recall it

1 from the Internet, I can actually plug in this unique
2 number, and it will pull up this particular document live.

3 Q. Now, specifically with respect to Iraq, the
4 insurgent groups or terrorist groups that are operating in
5 Iraq that have issued material on the Internet, can you
6 estimate, roughly, what percentage of that total amount
7 that's been issued you have actually collected and
8 maintained in your database?

9 A. I don't pretend to say exactly 100 percent
10 because it's possible I might have missed one. But to -- I
11 have spent enormous amount of time exhaustively attempting
12 to collect every single, last communique, every single,
13 last video, every single, last audio recording, and then
14 juxtaposing my knowledge of what's out there with the
15 knowledge of others to see whether or not I've missed
16 anything, if there is anything out there I've missed. And
17 I would estimate that I have probably over 99 percent of
18 what's been released in the last three years.

19 Q. And do you have any convenient way for us to
20 understand how much material you've actually collected?

21 A. To give the -- a rough idea, my database of all
22 the material that I've collected over the years is
23 approximately 1.3 terabytes in size. That's
24 1300 gigabytes.

25 Now, one gigabyte of space alone can store

1 hundreds and thousands and millions of pages of documents.
2 Now, naturally a video -- one video recording can take up
3 much more room than a document. But even a video recording
4 doesn't take up more than 50 or 60 megabytes, so you can
5 fit literally hundreds of video recordings into one
6 gigabyte, and then there's thousands of gigabytes, so
7 you're talking millions of documents, audio recordings,
8 videos, magazines. All of which is indexed on a searchable
9 index. I can search by particular words just like any --
10 any database, I guess.

11 Q. And then with all this material that you've
12 collected and placed into your database, do you use that as
13 a basis for your actual research?

14 A. Yes, I mean, that's the large part of what I do.
15 I either recall particular documents offhand, or if I don't
16 recall them, I can run searches through my database with
17 key words. I can look for take dates. I can look for
18 particular organizations. I have everything sorted out so
19 that whenever I'm looking for a particular organization or
20 a particular date, a source, it's very easy to find this
21 information quickly.

22 Q. Now, with respect to these documents or audio or
23 video files, what language are most of the files that are
24 in your database, what language with those in?

25 A. Most of them are in Arabic.

1 Q. Do you speak any language fluently?

2 A. Well, obviously English, I also speak French
3 fluently.

4 Q. And I think you testified -- or you told the
5 judge, at least, about your knowledge of Arabic. What is
6 the method that you use in order to translate or have
7 translated documents, audio or video files that are in your
8 database?

9 A. I use a technique that is known as "information
10 triage." What I do is, when I have information that comes
11 into me, let's say it's in Arabic, what I'll do is first,
12 use my own basic knowledge of Arabic, along with online
13 translation tools which can automatically translate Arabic
14 into very rough English. And what I do here is, I
15 determine from this very kind of rough translation which
16 particular documents are most importance to my research,
17 which particular documents I think have value. If I find a
18 particular document that I think would have value, I then
19 hand them over to translators, native translators from the
20 region who work for me.

21 I do this because of the fact that I feel that a
22 number of these documents, really, in order to translate
23 this properly, you have to be a native speaker. You can't
24 be a second language. So I use primarily Palestinians,
25 actually.

1 Q. Just briefly about your -- your prior
2 qualifications and your ability to render opinion evidence
3 support. Have you -- have you been retained as a
4 consultant by the government in any other cases other than
5 this one?

6 A. Yes.

7 Q. Can you approximate how many?

8 A. I've been retained in approximately two dozen
9 cases.

10 Q. Two dozen?

11 A. Total, yes.

12 Q. And in about how many of those cases did you
13 actually testify in court?

14 A. I've actually testified in court, I believe, ten
15 times.

16 Q. And on how many of those occasions did you --
17 were you qualified to offer opinion testimony?

18 A. I believe all but one.

19 Q. And were all of those cases in federal -- in U.S.
20 federal court?

21 A. That's correct.

22 Q. Now, have you ever testified in any foreign or
23 international courts?

24 A. Yes, I have.

25 Q. And can you briefly describe which courts those

1 would be for the jury?

2 A. Yes. In the United Kingdom, I testified before
3 the Old Bailey twice, which is one of the higher courts in
4 the United Kingdom. I also testified at Welsh Crown Court,
5 Snaresbrook Crown Court. And aside from the United
6 Kingdom, in Denmark I've testified in the High Court
7 Copenhagen, capital of Denmark. I've also testified
8 Supreme Court Bosnia-Herzegovina as an expert witness in
9 Sarajevo, which is the capital of --

10 MR. HERDMAN: At this point in time, I move to
11 qualify Evan Kohlmann as a witness able to render opinion
12 testimony on the use of the Internet and specific websites
13 for the designation of material related to terrorism or
14 material support for terrorism.

15 THE COURT: It will be allowed, and you may
16 proceed.

17 BY MR. HERDMAN:

18 Q. Mr. Kohlmann, with respect to the evidence in
19 this case, are you familiar with a website known as Muntada
20 Al-Ansar?

21 A. Yes.

22 Q. And I'll spell that, M-U-N-T-A-D-A, second word
23 is A-L, third word is A-N-S-A-R; is that correct?

24 A. That's correct, yes.

25 Q. Was this particular webpage, was it actually

1 password protected?

2 A. It was for a particular point in time, yes, at a
3 particular point in time.

4 Q. So at some point in time, it was not password
5 protected?

6 A. The website began in approximately 2003. By
7 roughly the late spring, early summer of 2004, the website
8 was password protected with the sense that in order to
9 access, you had to have a log in and password, otherwise
10 you had no idea what was on there.

11 Q. And if you didn't have a log in and a password
12 after May of 2004, you couldn't get into this particular
13 website?

14 A. For a short period, they offered what is known as
15 a new registration. In other words, anyone with a valid
16 e-mail address could go on there and put their name and
17 their e-mail address in and they could join. However,
18 because of the fact that this forum wanted relatively
19 discreet number of people on there, and they were a little
20 bit suspicious --

21 THE COURT: I'm going to tell the jury to
22 disregard about the, quote, forum. There's no basis for
23 that testimony.

24 BY MR. HERDMAN:

25 Q. Mr. Kohlmann, in essence, in May 2004 the website

1 became password protected?

2 A. Yes. And shortly thereafter, they closed
3 registration.

4 Q. So at certain points after May of 2004, a website
5 would reopen the registration process?

6 A. Briefly, for about -- usually, for about two
7 days. It wouldn't be advertised that they would do it.

8 Q. I'm going to direct your attention to some
9 specific audio recordings that were made in this case.

10 MR. HERDMAN: So if I could just have the jurors
11 get their headphones ready. And the first clip is from
12 November 23rd, 2004. It's clip EK-12-69185-3-A-1.

13 MR. BOSS: What was the date again, please?

14 MR. HERDMAN: November 23rd, 2004.

15 (Audio playing.)

16 BY MR. HERDMAN:

17 Q. Okay. Mr. Kohlmann, on the audio recording
18 there, did you hear something that was familiar to you
19 playing in the background?

20 A. Yes, there was a individual clip in the
21 background.

22 Q. I'm going to show you just a few minutes from
23 Government Exhibit 23.

24 A. These aren't -- I don't think these are on right
25 now. Are they supposed to be? No. I don't think they're

1 on right now.

2 THE COURT: What clip are you playing?

3 MR. HERDMAN: This is Exhibit 23, I'm just going
4 play probably about the first 45 seconds of this.

5 (Video playing.)

6 BY MR. HERDMAN:

7 Q. Okay. Mr. Kohlmann, is that the video that you
8 said that you recognized in the background of that segment?

9 A. Yes.

10 Q. Okay. That particular video that was just
11 played, Exhibit Number 23, was that --

12 THE COURT: You're picking up speed, so pause,
13 rewind. Start over.

14 MR. HERDMAN: Yes, Your Honor. Thank you.

15 BY MR. HERDMAN:

16 Q. Exhibit 23, the video that was just played, was
17 that particular video released initially on the Muntada
18 Al-Ansar webpage?

19 A. Yes, it was.

20 Q. And do you know approximately what date that
21 video was released on Muntada Al-Ansar webpage?

22 A. I believe the end of first week of November of
23 2004.

24 Q. So -- and the -- or the audio clip that we heard
25 played was made on November 23rd of 2004?

1 A. That's correct.

2 Q. So, that was within three weeks of the release of
3 that particular video?

4 A. Yeah, between two and three weeks.

5 Q. And at the time that that video that is depicted
6 in Exhibit 23 was released, was the Muntada Al-Ansar
7 webpage password protected at that point in time?

8 A. Yes, it was.

9 Q. I'd like to now direct your attention to
10 January 10th, 2005.

11 MR. HERDMAN: This is EK146-9185-9A-2.

12 (Audio playing.)

13 BY MR. HERDMAN:

14 Q. Mr. Kohlmann, with respect to that segment right
15 there, Mohammed Amawi was discussing the volume of material
16 that was being released at that time. Were you -- were you
17 similarly trying to collect as much information as came out
18 in January of 2005?

19 A. Yes.

20 Q. And were you going on the Muntada Al-Ansar
21 webpage at that point in time?

22 A. That was one of my primary sources, yes.

23 Q. And was your experience similar to that described
24 by Mr. Amawi in that clip, with respect to the volume of
25 videos that were being released in January of 2005?

1 A. I think his characterization is spot on. I think
2 that's exactly right.

3 Q. And so on the Muntada Al-Ansar webpage, there
4 were numerous videos that were being released every single
5 day as of early 2005?

6 A. Yeah, it was literally between ten and 20 a day,
7 so much so that you had to be on there on a constant basis
8 or you might lose something.

9 Q. Are you familiar with a file named *Martyrdom* or
10 *Hero Operation Vest Preparation*?

11 A. Yes.

12 Q. And was that the particular video or file, was
13 that originally released on Muntada Al-Ansar?

14 A. Yes, it was.

15 Q. When -- approximately, when was that file first
16 released on Muntada Al-Ansar?

17 A. It was the last week of December, 2004.

18 Q. And was Muntada Al-Ansar, at that point in time
19 that *Martyrdom Operation Vest Preparation* video was
20 released on Muntada Al-Ansar, was the Muntada Al-Ansar
21 webpage password protected at that point in time?

22 A. Yes, it was.

23 Q. I'd like to play you another clip from
24 January 10th, 2005. This one is designated
25 EK-14-69185-12A.

1 (Audio playing.)

2 BY MR. HERDMAN:

3 Q. With respect as to that clip that was just
4 played, are you able to offer any opinion to the webpage
5 that Mohammed Amawi was referring to?

6 A. Yes.

7 Q. What is that page?

8 A. Muntada Al-Ansar.

9 Q. What did you base that on?

10 A. At the particular point in time when this
11 recording was made, Muntada Al-Ansar, this Internet forum,
12 was the official place where different, numerous Al-Qaeda
13 forces and Mujahideen groups were releasing material from
14 Iraq and elsewhere.

15 MR. BOSS: Objection.

16 THE COURT: I'm going to disregard to the, quote,
17 official place. It was a source where one could go to to
18 get that kind of material; is that correct?

19 THE WITNESS: No. Your Honor, it was -- they --
20 they issued official statements, Your Honor.

21 MR. BOSS: Objection.

22 THE COURT: Well, I'm going to -- jury will
23 disregard that. In terms of -- he can testify about that
24 time period and that location as a source for whatever.

25

1 BY MR. HERDMAN:

2 Q. I direct your attention to specifically what was
3 said in that segment, Mr. Kohlmann. Mr. Amawi talked about
4 the website for the Mujahideen and that website being
5 password protected?

6 A. Uh-huh.

7 Q. And also that segment talked about an actual
8 bomb-making video?

9 A. That's right.

10 Q. Do all three of those things taken together form
11 the basis of your opinion that he was talking about the
12 Muntada Al-Ansar webpage at that point in time?

13 A. Yes.

14 Q. Let's me play another clip from January 15th of
15 2005. And this one is designated --

16 THE COURT: One second. I do want to instruct
17 the jury to disregard any reference to, quote, official
18 website, because that has nothing to do with this case in
19 terms of, quote, official nature.

20 Go ahead.

21 MR. HERDMAN: Play another clip from January
22 10th, 2005. The designation from this is EK-14-69185-24A.

23 (Audio playing.)

24 BY MR. HERDMAN:

25 Q. Mr. Kohlmann, did you hear Mr. Amawi name the

1 website that he was on at that point in time?

2 A. Yes. He said, Muntada Al-Ansar.

3 Q. And in the brackets there, it says, Al Ansar
4 Forum. Could you explain what your understanding of the
5 difference is there?

6 A. It's -- it's just Arabic. *Muntada* in Arabic
7 means "forum." So if you say in Arabic, it's *Muntada*
8 *Al-Ansar*, you say it in English, it's the Ansar Forum.
9 It's the translated version.

10 MR. HERDMAN: We can continue with this clip.

11 (Audio playing.)

12 BY MR. HERDMAN:

13 Q. Mr. Kohlmann, did you just hear what sounded like
14 a keyboard in the background?

15 A. Yes.

16 Q. Would that typing, would that be consistent with
17 the action someone would have to go through in order -- to
18 go through in order to log into the Muntada Al-Ansar
19 webpage?

20 A. Yes.

21 MR. HERDMAN: Please continue.

22 (Audio playing.)

23 BY MR. HERDMAN:

24 Q. Now, at the end of that clip Mr. Kohlmann, there
25 was a discussion of, I think it was, like *Al Da'wa* Forum,

1 Al-Ansar forum. Does -- were those particular chat rooms
2 or discussion groups that were available on the Muntada
3 Al-Ansar webpage?

4 A. Yes. There was separate, there was rooms within
5 the Ansar webpage, and I believe that's what he's referring
6 to.

7 Q. Once you log into the Muntada Al-Ansar, webpage
8 those discussions --

9 MR. HARTMAN: Objection. Can we approach?

10 THE COURT: Sure.

11 (A sidebar conference was had on the
12 record.)

13 MR. HARTMAN: Maybe we should have thought about
14 this before, but he's talking about a lot of terms that are
15 in the definitions. Maybe we should just give them the
16 definitions, because if he -- if he talks about the terms
17 in a different way than they're in the definition, we're
18 going have a very big issue, either for us or him or
19 some -- it might be a problem.

20 MR. HERDMAN: Which definition, Steve?

21 MR. HARTMAN: Just a lot of terms like *Al Ansar*,
22 *Al Da'wa*. I mean, we've described all these groups,
23 organizations, and institutions that he's talked about, and
24 I know he's going to mention more.

25 MR. HERDMAN: He's not going to define any of

1 those terms, Your Honor. It's just I directed his
2 attention to that particular chat room. I didn't have him
3 define what his understanding of Dawa was.

4 THE COURT: If he does, I think the way to handle
5 it is simply say, Judge, please remind the jury that any
6 understanding about the definition of the term that he in
7 turn defines, or whatever, characterizes, that they're to
8 follow that definition. Let's wait if there's specific
9 instances where that's happening or you're concerned about,
10 call it to my attention and I'll remind them.

11 MR. HARTMAN: Okay.

12 THE COURT: I mean, I think that otherwise we're
13 going to -- we don't know what, if anything, he's going to
14 say. Let's find out. If he says something that might
15 conflict, then I'll tell them not to pay any attention to
16 it.

17 MR. HARTMAN: When he -- when he equates Al Da'wa
18 with the Muntada Al-Ansar website, it -- it gives a whole
19 different meaning to the definition of Dawa that we gave
20 the jury. And it seems to -- it seems to --

21 MR. WHITMER-RICH: We define the term --

22 THE COURT: I knew that, but Al-Da'wa website is
23 not telling -- he's not giving the definition of that.
24 It's just a designation of a website. He's not going to
25 say -- if he says Dawa means a political allegiance or

1 something like that, the difference in that, I'll say no.

2 MR. HERDMAN: I'm not going to ask him that.

3 MR. SOFER: Judge, just one thing, we can --
4 people in the back have already told me --I brought this to
5 the attention of Mr. Whitmer-Rich, hopefully they can calm
6 him. Do you know? If not, we're going to object in front
7 of jury if they can't keep him quiet. I noticed even the
8 jurors are --

9 THE COURT: I haven't myself, but if he does --
10 just tell him that that's been called to my attention, and
11 he's not only jeopardizing himself and his interest by
12 making comments that are audible or conduct that's visible
13 to anybody who can hear it. If necessary -- timeout.

14 If necessary, I'll take a brief adjournment and
15 I'll communicate that to him myself, I don't pretend to, at
16 this point --

17 MR. SOFER: I don't want to --

18 (A sidebar conference was concluded.)

19 THE COURT: And you may continue.

20 BY MR. HERDMAN:

21 Q. So Mr. Kohlmann, I think your testimony was that
22 those forums that were being discussed at the end of that
23 last segment, those were actual chat rooms or discussion
24 rooms that were accessible once someone had logged into the
25 Muntada Al-Ansar webpage?

1 A. Yeah, by various subject, yeah.

2 Q. If I could direct your attention now to
3 January 27th of 2005?

4 MR. HERDMAN: And this is clip -- clip
5 EK-18-69185-4A.

6 (Video playing.)

7 BY MR. HERDMAN:

8 Q. Mr. Kohlmann, do you recognize what Mohammed
9 Amawi was talking about right there?

10 A. Yes.

11 Q. Is that actually the website address for Muntada
12 Al-Ansar webpage in, roughly, January of 2005?

13 A. Yes, that's how you get to Muntada Al-Ansar.

14 Q. And it's Ansarnet.ws/vb?

15 A. That's correct.

16 Q. Now, at that point in time on January 27th of
17 2005, was the Muntada Al-Ansar webpage password protected?

18 A. Yes.

19 Q. It required a user name and password to get on?

20 A. Yes.

21 Q. And that website that Mr. Amawi was referring to,
22 the Muntada Al-Ansar website, did he also refer to it as
23 the Mujahideen website in that clip?

24 A. Yes, he did.

25 Q. All right. Now, I'd like to direct your

1 attention to February 2nd of 2005.

2 MR. HERDMAN: And this clip is designated
3 EK-22-691185-1A-1.

4 (Video playing.)

5 BY MR. HERDMAN:

6 Q. And Mr. Kohlmann, in that clip, do you hear
7 mention of the Ansarnet?

8 A. Yes.

9 Q. Directing your attention to the next clip.

10 MR. HERDMAN: This is designated as
11 EK-22-691185-2-A-1.

12 THE COURT: Same date?

13 MR. HERDMAN: I'm sorry, Your Honor?

14 THE COURT: Same date.

15 MR. HERDMAN: Yes, same date. It's February 2nd,
16 2005.

17 MR. BOSS: Your Honor, may we approach?

18 Judge, I withdraw my objection. Apologize.

19 MR. HERDMAN: And again, this is clip
20 EK-22-691185-2-A-1. It's on February 2nd, 2005.

21 (Video playing.)

22 BY MR. HERDMAN:

23 Q. And again, Mr. Kohlmann, in that portion there,
24 it's translated as "Al Ansar Forum," could you hear
25 Mr. Amawi say *Muntada Al-Ansar*?

1 A. Yes, I did.

2 (Video playing.)

3 BY MR. HERDMAN:

4 Q. Mr. Kohlmann, I realize that maybe the picture of
5 the video wasn't that great. Were you able to tell by
6 looking at the computer screen?

7 THE COURT: I cannot hear you.

8 BY MR. HERDMAN:

9 Q. I realize that the -- the quality of the video
10 recording wasn't that great. Were you able to tell by
11 looking at the computer screen what website Mr. Amawi was
12 in fact --

13 A. It does appear to resemble --

14 MR. HARTMAN: Objection. If we can approach --
15 but I don't think you could see it at all.

16 THE COURT: I think that the jury will be able to
17 determine that and you can cross-examine.

18 You may answer the question.

19 A. The structure of the pages is somewhat unique.
20 It's difficult to tell for sure, but it appears to me to be
21 Muntada Al-Ansar.

22 BY MR. HERDMAN:

23 Q. Was there something specific that led you to
24 believe that?

25 A. The logo at the top, you can see at one point a

1 image at the top of the screen which appears to be the logo
2 that was at the top of the Muntada Al-Ansar forum. Again,
3 I should say it's difficult to tell with the quality.

4 Q. Did you hear -- in that segment, did you hear
5 further discussion of a website address Ansarnet.ws?

6 A. That's correct, yes.

7 MR. HERDMAN: And if we could finally play
8 February 2nd, 2005, a clip designated EK-22-69185-9A-1.

9 (Video playing.)

10 BY MR. HERDMAN:

11 Q. Mr. Kohlmann, in that particular clip you heard
12 Marwan El-Hindi say, *Ansar Al Islam*, did you have any
13 opinion with respect to whether or not he was referring to
14 the Muntada Al-Ansar webpage when he said that?

15 A. Yes.

16 Q. And what do you base that on?

17 A. I base it on the fact that if you logged into the
18 Muntada Al-Ansar webpage, when you immediately logged in,
19 first thing it said to you was the Ansar Islam Forum. It
20 actually said, *Ansar Islam*, in English means the
21 "supporters of Islam," and that's exactly what it said at
22 the top of the page when you logged in. So it would be
23 very easy to understand if someone was logging into Muntada
24 Al-Ansar, they would, as a synonym, call this equally the
25 "Ansar Al Islam Forum."

1 Q. And on February 2nd, 2005, that webpage was
2 password protected, it required registration to access it?

3 A. That's correct, yes.

4 MR. BOSS: Which one would that be, Judge,
5 please. I'm sorry. Okay.

6 MR. HERDMAN: I didn't watch that, Your Honor.

7 THE COURT: Do you want to approach?

8 MR. BOSS: Yes, thank you.

9 (A sidebar conference was had on the
10 record.)

11 THE COURT: On the real time, you asked a
12 question.

13 MR. HERDMAN: Yes, and that was password --
14 (Question read back.)

15 MR. BOSS: Immediately before that, the witness
16 testified that it could have been one page or it could have
17 been another, suggesting that it was the second page which
18 was password protected. The question is, are they both
19 password protected? He said he wasn't certain which page
20 it was, it could have been one or the other.

21 MR. HERDMAN: I don't -- I believe his testimony
22 was that when you logged into the Muntada Al-Ansar webpage,
23 the first things that came up was Al Ansar Forum. Muntada
24 Al-Ansar -- or Al Islam, I'm sorry, thank you, Your Honor.

25 THE COURT: And that equals "Survivors of Islam,"

1 which is a synonym for Al --

2 MR. BOSS: I thought he was referring to it could
3 have been one webpage or another.

4 THE COURT: No, he was saying they were the same.

5 MR. BOSS: My mistake.

6 (Sidebar conference concluded.)

7 THE COURT: No problem. Okay.

8 The question and answer may stand.

9 And you may continue.

10 BY MR. HERDMAN:

11 Q. So again, Mr. Kohlmann, on February 2nd, 2005,
12 the Muntada Al-Ansar webpage was password protected and
13 required registration?

14 A. That's correct, yes.

15 Q. And the domain name or the web address that was
16 associated with the Muntada Al-Ansar webpage was
17 Ansarnet.ws/vb?

18 A. At that point in time, yes, that's correct.

19 Q. I'd like to direct your attention to Exhibit
20 165A-1B. This is the -- the Internet cookie history from
21 one of Marwan El-Hindi's computers.

22 MR. HERDMAN: If you can go to page 148, please?
23 If you can focus in on this part right there?

24 BY MR. HERDMAN:

25 Q. Mr. Kohlmann, do you recognize what's listed

1 there on the URL line?

2 A. Yes, I do.

3 Q. And what -- what is that, to your knowledge?

4 A. That is the domain name for the Muntada Al-Ansar
5 web forum.

6 Q. Okay. And according to this particular cookie,
7 this website was accessed on February 9th of 2005?

8 A. That's correct, yes.

9 Q. And you agreed that was the date after February
10 2nd, 2005?

11 A. That's correct, yes.

12 Q. And if I could direct your attention to page 144
13 of this same document. And if you could focus in on this
14 one here, you see the URL line, do you see something
15 familiar to you there?

16 A. Yes, I do.

17 Q. And can you just read that for the jury?

18 A. Yes. Ansarnet.ws.

19 Q. And this is spelled differently than the previous
20 Ansarnet; is that correct?

21 A. That's correct.

22 Q. Can you explain for the jury what your
23 understanding is of the difference in spelling between this
24 particular Ansarnet and the one that we referred to on page
25 148?

1 A. In order to make sure there was always a domain
2 active, that someone reached the forum, in case one domain
3 got shut down or whatnot, there would be multiple very,
4 very similar sounding names in order to access this
5 website, so you'd have Ansarnetws, Ansarnet.ws. And every
6 so often, they would change the name just slightly so it
7 would be very similar, but it would be one character
8 different, and it would be very difficult if anyone was
9 chasing it, to find it.

10 MR. HARTMAN: I'm going to object and ask that
11 that be stricken. He's talking about the purpose of
12 people, I mean, what? Come on.

13 THE COURT: I'll let the answer stand. I think
14 it was clarified by the last comment.

15 BY MR. HERDMAN:

16 Q. And Mr. Kohlmann, this -- this particular
17 spelling of Ansarnet, is this consistent with the Muntada
18 Al-Ansar webpage in February of 2005?

19 A. Yes. I accessed this webpage in February of
20 2005, and I accessed the Muntada Al-Ansar forum as a
21 result.

22 Q. And at this point in time, February 9th of 2005
23 or February 11th of 2005, was the Muntada Al-Ansar webpage
24 password protected?

25 A. Yes, it was.

1 Q. Did it require registration?

2 A. Yes, it was -- yes, it did, excuse me.

3 Q. Okay. Now, was there -- are you aware of, at
4 some point in time in the spring of 2005, did the Muntada
5 Al-Ansar webpage come down off the Internet, for lack of a
6 better term?

7 A. Yeah, more than once, yes.

8 Q. Okay. And it was essentially inoperable,
9 inaccessible on the Internet?

10 A. Yes, for two fairly long periods of time, yes.

11 Q. And right after the Muntada Al-Ansar webpage came
12 down off the Internet, were there other websites that
13 replicated the material that was available on the Muntada
14 Al-Ansar webpage?

15 A. Yes, there was a scramble to get on the other
16 forums which emulated the Muntada Al-Ansar forum.

17 Q. I'd like to direct your attention now to
18 March 31st of 2005, a recording made on that date.

19 MR. HERDMAN: And this is designated as
20 41-69185-7A.

21 (Audio playing.)

22 BY MR. HERDMAN:

23 Q. Just immediately prior to this, Mr. Amawi said,
24 The new Ansar is gone. What is your opinion as to which
25 webpage that refers to?

1 A. I believe he's likely referring to Muntada
2 Al-Ansar.

3 (Audio playing.)

4 BY MR. HERDMAN:

5 Q. Now, during conversation, it was on March 31st of
6 2005, was that time period consistent with what you just
7 described as to the Muntada Al-Ansar forum being
8 inaccessible on the Internet?

9 A. Yes, that's exactly what it corresponds.

10 Q. And you said there were other websites that tried
11 to duplicate what was on the Muntada Al-Ansar forum?

12 A. That's correct.

13 Q. And that's also what they were talking about in
14 that segment?

15 MR. HARTMAN: Objection to the form.

16 THE COURT: As to -- sustained as to what they
17 were talking about.

18 BY MR. HERDMAN:

19 Q. Did you hear reference to websites moving around
20 in that last segment, Mr. Kohlmann?

21 A. Yes, I did.

22 Q. I'd like to direct your attention back to
23 165A-1B. This is the Internet cookie history from Marwan
24 El-Hindi's computer. And direct you to page 100. And if
25 you can focus on this one here. Mr. Kohlmann, do you see

1 there in the URL, do you see a website that's spelled
2 F-I-R-D-A-W-S, dot, N-O, dash, IP, dot, B-I-Z?

3 A. Yes.

4 Q. And according to this particular cookie, it says
5 it was accessed on April 5th of 2005?

6 A. Yes, that's correct.

7 Q. Are you familiar with that URL -- first of all,
8 did you see .noIP.biz?

9 A. Yes, I did.

10 Q. Is that one of those websites you described that
11 arose after the Muntada Al-Ansar webpage came down?

12 A. Yes, it's the Al Firdaws forum.

13 THE COURT: I'm sorry, the what?

14 A. Al Firdaws, F-I-R-D-A-W-S, Firdaws.

15 BY MR. HERDMAN:

16 Q. Okay. And with respect to this date here,
17 April 5th of 2005, is that date consistent with time period
18 when the Muntada Al-Ansar webpage was inaccessible on the
19 Internet?

20 A. Yes, that is.

21 Q. All right.

22 MR. HERDMAN: If you can take us to page 101,
23 please? And focus on this one here. Okay.

24 BY MR. HERDMAN:

25 Q. Do you recognize the name of the website in the

1 URL here, this is on page 101?

2 A. Yes.

3 Q. And it's www.al-qaylah.com?

4 A. That's correct, Al Qayla.

5 Q. And this particular cookie was, according to
6 this, was accessed on April 3rd of 2005?

7 A. That's correct.

8 Q. Now, with respect to this website, is this the
9 same as Firdaws in that it -- it was -- it was duplicating
10 some of the information that was on the Muntada Al-Ansar
11 webpage after that Muntada Al-Ansar webpage went down?

12 A. Yeah, it wasn't as exhaustive as Al Firdaws, but
13 you could find some of the same items on there as well.

14 Q. And again, this April 3rd, 2005 date is
15 consistent with the time period when the Muntada Al-Ansar
16 webpage was inaccessible?

17 A. That's correct, yes.

18 Q. Okay. Finally, I'd like to direct your attention
19 to page 102 of this same exhibit.

20 MR. HERDMAN: And starting if you, can just
21 focusing on these last three here. Okay.

22 BY MR. HERDMAN:

23 Q. Mr. Kohlmann, do you recognize those three URLs
24 that are on the screen right now?

25 A. Yes, I do.

1 Q. Let's take the first one, which is
2 O-B-L-C-R-E-W.net. Is this similar to the Firdaws and the
3 Al Qayla websites?

4 A. No. This is different.

5 Q. Was it done in the light of Muntada Al-Ansar
6 becoming inaccessible?

7 A. That was one of the reasons that spurred the --

8 MR. HARTMAN: Objection.

9 THE COURT: Sustained for the reasons. He may
10 answer the question asked.

11 BY MR. HERDMAN:

12 Q. Let me ask you this question, Mr. Kohlmann: The
13 dates that are -- the dates this particular cookie was
14 accessed, April 3rd of 2005, is that time period consistent
15 with Muntada Al-Ansar being inaccessible via the Internet?

16 A. Yes.

17 Q. And I'll take you to this last one, again. It's
18 spelled -- the URL is spelled A-L-Q-A-3-E-D-A-H, dot,
19 N-E-T-F-R-E-S-T-E-S-H-H-O-S-T-com. Are you familiar with
20 that URL?

21 A. Yes, I am.

22 Q. Is that similar to the other URLs we've just
23 discussed with respect to their relation to the Muntada
24 Al-Ansar webpage?

25 A. Particularly to OBLcrew.net. They're fairly

1 similar.

2 Q. And again, the date there is April 2nd of 2005?

3 A. Yes.

4 Q. And that date is consistent with the time period
5 in which Muntada Al-Ansar webpage was inaccessible?

6 A. That's correct, yes.

7 Q. And finally, the second one here is in4news.net.

8 Are you familiar with that URL?

9 A. Yes, I am.

10 Q. And was that particular URL, did that duplicate
11 what was on the Muntada Al-Ansar webpage after the Muntada
12 Al-Ansar webpage became inaccessible?

13 A. It actually was the Muntada Al-Ansar webpage. It
14 went up online again briefly, and then got shut down again,
15 so this was one of the domains they used during that period
16 of time.

17 Q. And when you say that period of time, that would
18 include the April 2nd, 2005 date that the cookie was
19 accessed?

20 A. I believe so, yes.

21 Q. And that date, again's, consistent with the
22 Muntada Al-Ansar webpage, at least the Ansarnet.ws webpage
23 being inaccessible on the Internet?

24 A. That's correct.

25 MR. HERDMAN: And finally, Your Honor, with

1 respect to this, I'd like to direct the witness' attention
2 to May 25th of 2005. This is clip 6A-69185-6A.

3 (Audio playing.)

4 BY MR. HERDMAN:

5 Q. And with respect to that clip, did you hear
6 Mr. Amawi say, Muntada Al-Ansar.

7 A. Yes.

8 Q. And in May -- on May 25th of 2005, was the
9 Muntada Al-Ansar webpage Ansarnet.ws?

10 A. I'm sorry, what was the date again?

11 Q. May 25th, 2005, was the Muntada Al-Ansar webpage
12 available online?

13 A. I don't think so, no. I don't think it was
14 online on that particular date.

15 Q. And in that general time period, was the Muntada
16 Al-Ansar webpage still -- when it was up, was it password
17 protected, was a log in required?

18 A. Yes. Yes.

19 MR. HERDMAN: Your Honor, may I approach briefly?

20 THE COURT: Uh-huh.

21 (A sidebar conference was had on the
22 record.)

23 MR. HERDMAN: Two things, Your Honor. I'm now
24 prepared to ask the witness whether the Muntada Al-Ansar
25 forum was the primary and initial distribution point for

1 video releases by Al-Qaeda in Iraq. I told you I would ask
2 that at the end of this particular block of testimony. So
3 I'm prepared to ask that question. I just wanted to raise
4 that for The Court.

5 Secondly, the next block of testimony deals with
6 Ekhlaas, and I understand Mr. Hartman wanted to voir dire
7 Mr. Kohlmann with respect to that exhibit.

8 THE COURT: Why don't we take a short break for
9 all of us? When you're ready to go again, let's do that.
10 I'm -- I'm inclined not to get into the primary forum
11 issue. We have -- we saw all the clips, and there's
12 reference themselves by the defendants. That's the best
13 evidence you have.

14 MR. SOFER: And Judge, actually, I think
15 that's -- I don't agree with it, but I understand The
16 Court's point. The only thing I would say is, because
17 counsel now has begun to over and over say Mr. Amawi is
18 lying to Mr. Griffin, I believe we are beginning to see the
19 defense that Mr. Amawi's likely to present. If that
20 continues, it seems to me, then, a number of these issues
21 like this, and this one in specific about whether, in fact,
22 Mr. Amawi's lying to Mr. Griffin, it would raise its head
23 just mentioning it now, because I think it's an important
24 point.

25 THE COURT: That's fair. I think at this point

1 that's the way we'll leave it. We'll go from there.

2 And Angela, when you're ready to go and get this
3 time. And then we'll voir dire Mr. Kohlmann on that, and
4 then --

5 So I'm going to tell the jury it will probably be
6 about 11:30 at the earliest before we're ready to go. How
7 much longer total for the direct? I ought to adjourn.
8 I've got a meeting at 12:15. I have something else at
9 11:45, but I'll strike that.

10 MR. HERDMAN: I hope to be done within an hour.
11 This was --

12 THE COURT: About 12:30 or so?

13 MR. HERDMAN: Yes, this was the --

14 THE COURT: I'll tell him it will take us to
15 about 11:30 or so, we have some things to tend to, and then
16 I expect about an hour, and then direct, and we'll break
17 for lunch about 12:30.

18 MR. HARTMAN: There won't be much cross.

19 THE COURT: That's why I pointed to you guys.
20 Well, in terms of cross, can we go straight into it or
21 break for lunch? You probably would rather break for
22 lunch.

23 MR. WHITMER-RICH: Why don't you ask us at the
24 time and see what we say.

25 MR. HARTMAN: That's a good idea.

1 THE COURT: I mean, the jury's going to be
2 ordering lunch, so whatever, it's up to you guys.

3 MR. SOFER: If he has an hour, Judge, we're
4 looking at 12:30 any way.

5 THE COURT: Okay. How long do you expect this
6 voir dire to be?

7 MR. HARTMAN: Five minutes.

8 (Sidebar concluded.)

9 THE COURT: Ladies and gentlemen, we're going to
10 take a recess until about 11:30. I hope we can resume
11 then. There are a couple of things we have to still tend
12 to, some loose ends I have to tie up. And I expect that
13 the completion of the direct testimony of Mr. Kohlmann will
14 take about an hour or so, and then I will consult with
15 counsel in terms of how long they expect the cross to take.
16 If it looks like it may be somewhat longer than half-hour
17 or whatever, I think we're going to adjourn for lunch.
18 Although what I might try to do is wind it all up so that
19 then you can either eat your lunch or take your lunch or
20 leave, but this will be the only witness today. And
21 actually, I think we might anticipate adjourning once
22 Mr. Kohlmann is done. Okay.

23 Sorry to be so indefinite about the timetable,
24 but it looks as though by early afternoon, we'll be in
25 adjournment and ready to go tomorrow, because I expect that

1 this is the government's last witness. And then we've got
2 some matters of exhibits and things like that to take care
3 of. So rather than having you sitting around perhaps
4 getting delayed and be late in the afternoon getting
5 started, I think that makes a better breaking point. We'll
6 see, but 11:30, 11:35.

7 (Jury out.)

8 MR. SOFER: Judge, while we're here in terms of
9 scheduling for -- in terms of scheduling for today, then
10 the next -- the government wants to rest after we've dealt
11 with these other exhibits in front of the jury. Ideally,
12 since we're stipulating to a bunch of documents and other
13 kind of evidence, the jury would -- actually, we'd publish
14 that to the jury in some way shape or form. It's up to
15 Your Honor how he wants to do that, but assuming we don't
16 have a lot of bumps on the road on the stipulations any --
17 from what I understand we don't -- it would be our request
18 to have the jury --

19 THE COURT: You can rest tomorrow.

20 MR. SOFER: But I think it might take an hour or
21 so for them to look through and view the evidence that's
22 coming in via the stipulations, so --

23 MR. HARTMAN: We're not ready -- I, frankly, just
24 haven't had time, I don't think we're going to have a lot
25 of bumps in the road, I don't know if these guys have.

1 THE COURT: Maybe we'll take a lunch break then
2 and do it then, and we'll go from there.

3 MR. SOFER: I think we could use the rest of
4 today to the extent that The Court has the time certainly
5 to deal with that, and then if the jury's still here, they
6 could sort of -- again, if it takes a half-hour to work it
7 out, and they can take an hour of time to read through the
8 stuff, then they can get the defense case going.

9 THE COURT: If they don't get to go home early,
10 then I'll blame me.

11 MR. HARTMAN: That's what we do.

12 (Brief recess.)

13 (All counsel present in courtroom. Jury not
14 present.)

15 MR. HERDMAN: Your Honor, would you like me to go
16 through the foundation with that particular exhibits and
17 allow Mr. Hartman to ask questions? I'm not sure how you
18 want me to proceed.

19 THE COURT: Why don't we do this, as you were
20 coming in, he asked if he should go through a foundation,
21 and I think that makes sense, so if you can respond to what
22 that's about.

23 MR. HARTMAN: That's fine.

24 THE COURT: Okay.

25 (Voir dire conducted)

1 BY MR. HERDMAN:

2 Q. Mr. Kohlmann, I'd like to direct your attention
3 to 213 that's on the screen here.

4 A. Yes.

5 Q. And if you can scroll through the first couple of
6 pages of this. I think there's 12 pages in all. Okay. Do
7 you recognize Exhibit 213, Mr. Kohlmann?

8 A. Yes, I do.

9 Q. What is that?

10 A. This is a document which I saved from the Ekhlaas
11 forum several weeks ago, actually.

12 MR. HERDMAN: And can you -- can you pull up 73,
13 page 3. Okay.

14 BY MR. HERDMAN:

15 Q. Do you recognize what's written in handwriting on
16 that piece of paper there?

17 A. Yes, I do.

18 Q. And is that a particular thread that is available
19 on the Ekhlaas.com website?

20 A. There are two typos in this, but they're kind of
21 obvious ones. Forum's missing a slow -- and slow thread is
22 read show thread, but this is referring to a particular
23 thread or message on the Ekhlaas forum, and the number
24 appears that the unique identification number for that
25 message appears to be 6181.

1 Q. And based on this, you were presented with this
2 website address that's depicted there on Exhibit 73?

3 A. That's correct.

4 Q. After you corrected the typo -- corrected for the
5 typos, were you able to navigate to the Ekhlaas webpage and
6 go to this particular thread here ending 6181?

7 A. Yes, the database of the Ekhlaas forum is
8 essentially the exact same as it was back then, just has
9 new messages, but archived stuff from back in 2004 and 2005
10 was still there. As long as you have the unique numeric
11 number, the 6181, all you have to do is plug in 6181, where
12 it says "show thread" and it will immediately bring up the
13 message -- any message from all the way to when Ekhlaas was
14 started.

15 MR. HERDMAN: And if you can go back to Exhibit
16 213. And go down to about the maybe the third, the third
17 page, please. Okay.

18 BY MR. HERDMAN:

19 Q. And I just want to direct your attention briefly
20 to this portion of that exhibit right there. It says
21 PM10:59.

22 MR. HERDMAN: Can you zoom in on that, Kevin? I
23 can hardly read it. All right.

24 BY MR. HERDMAN:

25 Q. It says, PM10:59, comma, 2005-02-10. Are you --

1 are you familiar with the way that the Ekhlaas webpage
2 dates and time stamps a particular post for that page?

3 A. Yes, the first obviously p.m. is at night,
4 10:59 p.m. on a 12-hour time clock; 2005 is the year; 02
5 stands for February; ten, February 10th of 2005 at
6 10:59 p.m.

7 Q. Is that date -- is that nomenclature consistent
8 throughout Exhibit 213?

9 A. Yes and throughout the entire Ekhlaas website.

10 MR. HERDMAN: All right, Your Honor. I'll allow
11 Mr. Hartman to ask questions.

12 BY MR. HARTMAN:

13 Q. Mr. Kohlmann, I am going to use the ELMO here, I
14 hope. I'm going to put up, first of all, this page here,
15 and see if I can zoom in on this.

16 THE COURT: And for the record have you marked
17 that for identification?

18 MR. HARTMAN: For the record, this is exhibit --
19 was delivered as Government's Exhibit 213.

20 BY MR. HERDMAN:

21 Q. Now that says 110310-2-2005.

22 A. That's correct.

23 Q. So you're saying that's when that message was
24 posted?

25 A. That's correct. Well, I should say it depends,

1 because in terms of time, the actual 11:43 p.m., it depends
2 what your time settings are as a user. You can change to
3 the Greenwich Mean Time or Eastern Standard Time, and it
4 will automatically adjust the clock, but it shouldn't have
5 any impact on the dates on the clock.

6 MR. HERDMAN: Let me put --

7 Your Honor, my question is what -- that the FBI
8 document that Mr. Hartman has on the ELMO is this
9 Government's Exhibit 213 that was just displayed on the
10 screen.

11 MR. HARTMAN: I'm telling you, it was what was
12 handed to me as Government's Exhibit 213. There, right
13 there.

14 MR. HERDMAN: When was -- when was that given to
15 you, Mr. Hartman?

16 MR. HARTMAN: I don't know. When did you give me
17 213?

18 MR. HERDMAN: Last week. What I'm saying is, the
19 document your directing the witness' attention to is the
20 213 I just directed his attention to.

21 MR. HARTMAN: Okay.

22 MR. HERDMAN: As long as it's clear, have no
23 objection. I just continue to make that clear.

24 MR. HARTMAN: Okay. I believe this was the first
25 213.

1 THE COURT: And what -- why are you examining off
2 of that document rather than the one that that was -- that
3 the government intends to offer -- and realizing you had a
4 different one, whether you were misled or whatever, that's
5 a different issue, but I mean, are you not prepared --
6 where are you going with this? I'm kind of puzzled.

7 MR. HARTMAN: The first document that we were
8 offered as Exhibit 213 --

9 THE COURT: That you were provided.

10 MR. HARTMAN: That we were provided as Exhibit
11 213 --

12 THE COURT: Of which the jury hasn't seen.

13 MR. HARTMAN: -- which the jury hasn't seen, has
14 different content than the second document we were provided
15 as 213.

16 THE COURT: And so I realize your question is to
17 be addressed to government counsel instead of Mr. Kohlmann.

18 MR. HARTMAN: He was the one who apparently went
19 and got this, though.

20 THE COURT: Why don't you show him -- why don't
21 you mark the 213 that was provided to you as whatever
22 El-Hindi exhibit would be next so that everybody knows
23 you're talking about something different.

24 THE WITNESS: Your Honor, I may be able to help,
25 excuse me.

1 THE COURT: Do you see what I'm saying?
2 Otherwise, not only am I not going to understand, the Court
3 of Appeals in this case, if it winds up getting there,
4 won't have a clue either. Or you can mark it as El-Hindi
5 Exhibit 101, or whatever, if you're not sure where you are,
6 or 201.

7 BY MR. HARTMAN:

8 Q. Okay. This is -- was originally proffered as
9 Government's Exhibit 213 and has now been marked as
10 Defendant's Exhibit EH5. There is handwriting at the top
11 that was written by defense counsel. So, that was not
12 there when the government offered this. My point is that I
13 was trying to show -- and I showed you that the FBI
14 posting, Mr. Kohlmann.

15 A. Right.

16 Q. With this date and time?

17 A. Right.

18 Q. And in what has now been offered as Government's
19 Exhibit 213, there is a posting of a similar date and time,
20 do you see that?

21 A. Yes, I do.

22 Q. Then why would the content of the two different
23 Exhibit 213s be different?

24 A. Actually, the content was the exact same when it
25 was given to the government. I noticed because I actually

1 gave them the exact same file both times, and it was
2 contained within a compressed zip file, so the files
3 themselves are the same.

4 THE COURT: I'm sorry. Pause rewind, slow down,
5 please.

6 THE WITNESS: I'm sorry, me or --

7 THE COURT: You.

8 THE WITNESS: I'm sorry.

9 A. The original file itself was the same file. It
10 was compressed within a zip file, which is basically what
11 takes all the information and compresses it so it can't be
12 altered. The same zip file was given to the government
13 both times. I don't know what happened in terms of the
14 printing, how it printed out. I don't know, but if you'd
15 like, I can provide you exactly with what I provided them
16 in the original digital format. It's -- it's -- I don't
17 know why it's different here, but I gave them the exact
18 same thing.

19 Q. Well, I'm not just talking about the printout
20 being different. Do you see this on the first page? Do
21 you see this picture here of the -- it's hard to tell what
22 it is?

23 A. That's an image from an Al-Qaeda in Iraq film.

24 Q. Okay. And do you see that on the first page of
25 Government Exhibit 213?

1 A. I believe it's the image that's right below the
2 image of Dr. Ayman Al-Zawahiri right here. What it is -- I
3 should probably explain. These are what are known as gifs,
4 all right? They are not as animated gifs.

5 THE COURT: And how do you spell that?

6 THE WITNESS: Sure, G-I-F, which means that it's
7 an image that is not just one image, it's like a
8 mini-movie, so that if you load up this webpage, it's like
9 an animated graphic, so it shows the logo of the group,
10 then it shows a couple of screen shots from the video, and
11 it keeps cycling through.

12 Now, depending on when you hit print, if you hit
13 print when it's on one frame, it'll print showing you that
14 one frame, whereas if you hit print a couple seconds later,
15 it'll show you a different frame for the same animated gif,
16 but it's the same file. It can -- it's like I said, what
17 it is, is it's like a little movie playing, but it's a
18 graphic movie.

19 MR. HERDMAN: So the first --

20 THE COURT: In other words, if I can -- in other
21 words, when you go to the website, newspaper or whatever,
22 there'll be advertising that shows movement of some kind
23 and will be repeated. And if I understand what you're
24 saying is, if you want to make a copy of what's on your
25 screen, make it at one moment that segment of it might

1 differ than if you make the copy a second moment.

2 THE WITNESS: A print, when you say --

3 THE COURT: Print.

4 THE WITNESS: Yeah.

5 THE COURT: If you want to print out a copy,
6 whatever is being recycled, you'll get one thing depicted
7 the first time, and even though immediately afterwards, as
8 fast as your hand can move, you print -- printout another,
9 quote, copy, closed quote, you would have a different --
10 something different depicted on that part or portion of the
11 page.

12 THE WITNESS: That's dead on, Your Honor. Yes,
13 exactly.

14 BY MR. HARTMAN:

15 Q. And you said you printed this off a few weeks
16 ago?

17 A. No. I saved the file. I never printed it. I
18 saved it as an HTML file, and I saved all the images
19 individually, so if I gave you the raw digital version I
20 have, it would appear the same no matter when you opened
21 it. You would actually see the images moving if you opened
22 it electronically. Now, my understanding is that the
23 government may have printed out versions of this
24 afterwards, after I gave it to them, but I didn't actually
25 print the document. I gave them the raw digital content.

1 Q. So you saved it as an HTML file?

2 A. Yes.

3 Q. Not as a PDF?

4 A. I can if you'd like, but if I save it as a PDF,
5 the gifs won't be animated.

6 Q. When you saved this -- first of all, when did you
7 save it?

8 A. I believe I saved this on March 31st, 2008.

9 Q. Okay. So based on the movie aspect that you just
10 told us about, we have no idea what was on the front page
11 of this when these postings were made back in 2005?

12 A. No, we do. I have all this -- again, I have all
13 those images saved, I can give them all to you. I have a
14 digital version of this webpage saved, an exact digital
15 replica. In other words, if you open this digital replica
16 up, it would look exactly as if you opened it up on the
17 actual website itself.

18 However, when you print out a document or you
19 make it into a PDF, it makes it from a dynamic page where
20 there's dynamic content into a static page, where there's no
21 no dynamic page, static. So at that point, there's no
22 movement. So if you want to see the original version with
23 all the graphics and what not, I mean, I can give you all
24 the graphics. I can give you exactly as it appeared, but
25 it would have to be in digital format, and it couldn't be

1 in PDF, it would have to be in HTML.

2 Q. When did you --

3 MR. HARTMAN: Will you put up page 3 of Exhibit
4 73.

5 BY MR. HARTMAN:

6 Q. When did you use this to go to this archived
7 website?

8 A. Well, again, you say "used" this --

9 MR. HERDMAN: Your Honor.

10 BY MR. HARTMAN: I mean, what's being shown, page 3 of
11 Exhibit 73, when did you take that to go get what was
12 represented as Government's Exhibit 213.

13 MR. HERDMAN: And Your Honor, I object to this.
14 At this point this is irrelevant, and I think that whatever
15 confusion there was with respect to these two exhibits, I
16 think the witness has just cleared that up. I don't see
17 any further reason for any questioning on this.

18 THE COURT: I would agree. Where are we headed?
19 He's explained why the graphic would be different.

20 MR. HARTMAN: What I'm trying to get at is when
21 the digital file was saved. That's all I want to know.
22 When he saved it. Did he save it back in 2005 or did he
23 save it three weeks ago?

24 THE COURT: And I think he said he'd saved it
25 three weeks ago; is that correct?

1 THE WITNESS: I believe March 31st, 2008. It's
2 actually on the printout.

3 THE COURT: If I understand the testimony, it is
4 that he accessed this webpage, and then went looking for
5 that thread and in effect, he went digging into what used
6 to be a newspaper morgue to find the particular webpage of
7 that thread as of the date that it was made; is that
8 correct?

9 THE WITNESS: That's exactly on.

10 THE COURT: In other words, it's as if I go down
11 to the public library and say, I want the Toledo Blade for
12 December 12th, 1933, and page 10, I find it on the
13 microfilm and print it out, that's what is there, under
14 that date and designation.

15 MR. HARTMAN: I understand, but they're going to
16 have the same front page, and these two Exhibits 213,
17 though, he has explained that now?

18 THE COURT: Right.

19 MR. HARTMAN: I would like to talk to my computer
20 expert for 10 seconds.

21 THE COURT: Absolutely. Sure. Sure.

22 BY MR. HARTMAN:

23 Q. I understand why the front pages are different,
24 but just to be clear, if you type that in, you're not going
25 to get to what's represented as Government's 213, correct?

1 A. Again, there are obvious typos in here. There's
2 no such thing as show the read, show thread, this is a
3 standard piece of Internet software.

4 THE COURT: I'm breathless trying to follow you.
5 Please speak a little more slowly.

6 BY MR. HARTMAN:

7 Q. And let me just ask this: If you type that in,
8 you're not going to get to what's shown as Exhibits 213?

9 A. If you type that in verbatim, you would not get
10 to that, no.

11 MR. HARTMAN: I have nothing further, Judge.

12 THE COURT: Okay.

13 MR. HERDMAN: Your Honor, just briefly, Mr. Sofer
14 brought this to my attention, with respect to 213.

15 If you bring that up really quickly.

16 I intend to ask the witness whether he
17 identify -- whether he knows -- I'm used to being up there
18 now -- the individual that's depicted on there, Your Honor,
19 I intend to ask the witness what that person's name is.
20 Obviously, without any further description or anything like
21 that, just putting, essentially, a name with a face. As
22 well as on Exhibit 61, there are --

23 Can you zoom in on this part here? On the
24 photos.

25 There are three individuals that are depicted on

1 here, Your Honor, right here, and here, right here and I
2 believe right here, although it's faint. Oh, and here. I
3 intend to ask the witness whether he identifies those
4 individuals, and I would say, with respect to this page,
5 that several of those individuals are referenced by name in
6 an actual 1D segment with respect to this page.

7 MR. HARTMAN: And in response, I would say as to
8 the person on 213, we have no way of knowing if that was on
9 the screen at the time anyone visited it in 2005 because as
10 Mr. Kohlmann said, it was a moving picture. I don't think
11 it's appropriate to say that person's name.

12 I would also move to strike Exhibit 213
13 altogether, unless there is some evidence that one of the
14 defendants fixed the same typos that Mr. Kohlmann fixed in
15 order for him to get there. Otherwise, there's not --
16 evidence they went there.

17 MR. HERDMAN: I think the evidence -- or at least
18 the testimony, as I understood it, was that there were
19 certain images that were dynamic in that page. I don't
20 believe the photograph of Mr. Zawahiri is one of them. I
21 can ask the witness right now if you'd like to confirm
22 that.

23 THE COURT: Well, I think that there's sufficient
24 circumstantial evidence to connect that handwritten Ekhlaas
25 shred to this exhibit, and I think the objection goes to

1 the weight and not to the admissibility of the exhibit, and
2 I will permit the witness to identify those individuals if
3 he's able to do so.

4 MR. HERDMAN: Again, just by name, Your Honor.

5 THE COURT: I understand.

6 So the objection as to both of those bits of
7 testimony has been made and preserved. I overrule it.

8 Okay.

9 While Amy's getting the jury, why don't we do
10 this, and I will tell them this, we'll complete the direct
11 examination. It's going to take maybe about an hour.
12 They'll have their lunch. We'll come back.

13 What is it you want to do, Mr. Sofer, in front of
14 the jury?

15 MR. SOFER: Well, we've sent out the --

16 THE COURT: After cross, of course.

17 MR. SOFER: -- we've dubbed them "evidentiary
18 stipulations." This relates to a number of documents and
19 other kinds of photographic documentary evidence. We've
20 not yet heard back, I don't think, a definitive word about
21 what the issues are there. So that obviously, should not
22 be done in front of the jury. However, if we can resolve
23 that in ten or 15 minutes or even a half an hour, then
24 we'll be prepared to move our last pieces of evidence in
25 and also, then rest.

In addition to moving them in, obviously, we'd like to publish them to the jury. Some -- some of these are long. We're not asking to sit here and read 500 pages of telephone records, but at least to show the jury the basis of what it is that the government's moved into --

6 THE COURT: Let's do this: When we adjourn for
7 lunch, you people talk, let me know if there's a serious
8 problem. I'll try to come in after about a half-hour
9 break, or less, if you're ready to talk about it. We'll
10 see if Angela's available, and I'll try to rule on it then,
11 and we'll try to let you do that this afternoon if we can.
12 We'll -- then we'll excuse the jury -- whatever time that
13 may be, I hope it's before 4:30 -- but that's just what I
14 just told them. And we'll --

15 MR. SOFER: We're prepared to do all that, Judge.

16 MR. HARTMAN: Judge, I need to make a quick
17 correction to the record on the 29th of April.

18 THE COURT: Why don't you do that and just let
19 Angela know -- or Amy, actually.

20 (Jury brought in at 11:49.)

THE COURT: Ladies and gentlemen, just to try to give you a bit of a heads up in terms of timing, to the extent that I'm about to speak with a foreign tongue, I apologize, because there may actually be some more items to present to you once Mr. Kohlmann's completed, in terms of

1 documentary evidence, tangible evidence of one kind or
2 another that, in turn, can depend a bit upon resolving a
3 couple issues relating to that evidence.

4 I think Mr. Kohlmann will be on the stand
5 probably until maybe noon, for an hour on direct, and we'll
6 see about the cross-examination. We'll take our break for
7 lunch then. In any event, I don't believe the
8 cross-examination is going to be particularly lengthy, but
9 that's never to be predicted, and also on behalf of
10 redirect, of course.

11 My point is, during the noon hour, counsel and I
12 will try to resolve the odds and ends and issues as to the
13 final chunk of the government's case. If we're able to do
14 that, then what I will like to do and counsel -- depends on
15 where we are in terms of time -- that maybe we can wind
16 that up this afternoon as well. All of which is to say we
17 may be putting a bit fuller day or even full day, contrary
18 to what I told you half-hour or so.

19 So I appreciate your patience, and I hope that
20 you all understand that, really, we're trying to go back
21 and compress our work and my work, the kinds of things I
22 have to do as a judge, in a way that inconveniences --
23 inconveniences you the least. If, however, any of you have
24 made changes to your own personal schedule that would make
25 it difficult for you to sit for the normal time, let Amy

1 know over the lunch hour, and she'll let us know. I
2 apologize for the back and forth, but it's just the way
3 things develop sometimes in the course of trial.

4 In any event, Mr. Kohlmann, you remain under
5 oath.

6 And Mr. Herdman, you may inquire.

7 MR. HERDMAN: Thank you, Your Honor.

8 BY MR. HERDMAN:

9 Q. Mr. Kohlmann, I'd like to direct your attention
10 to Government's Exhibit 73. This is a printout that was
11 given to Darren Griffin by Marwan El-Hindi on
12 February 18th, 2005. And direct your attention to the
13 third page of this document. Are you familiar with what is
14 written here?

15 A. Yes, I am.

16 Q. And is -- are you familiar with a webpage called
17 "Ekhlaas"?

18 A. Yes, I am.

19 Q. Was that particular webpage password protected?

20 A. It was for the large part. It has been, I should
21 say, for the large part of its existence, since probably
22 early 2005.

23 Q. In February of 2005 was this particular webpage
24 password protected?

25 A. Yes.

1 Q. Did it require a registration in order to access
2 the content?

3 A. Yes, it did.

4 Q. And the user of the Ekhlaas.com webpage, would
5 they have a log-in name and password?

6 A. Yes, they would.

7 Q. Now, by the way, in this -- in this particular --
8 the web address that I've underlined here, do you see any
9 typos when you look at this, do you see any particular
10 typos in that line there?

11 A. Yeah, there's nothing wrong with the site name,
12 but where it says "form," that should actually be "forum."
13 There should be a U between the R and the M. And it says
14 "show the read," that's a typo. It should say "show
15 thread," S-H-O-W-T-H-R-E-A-D.

16 Q. Despite those two typos, were you able to
17 determine whether this was an actual thread that was
18 available on the Ekhlaas webpage in February of 2005?

19 A. Yes, I was.

20 Q. Okay. And were you able to obtain an archived
21 version of this particular thread?

22 A. Yes, I went to the current version of the Ekhlaas
23 website. I took the numer -- unique numeric identifier for
24 this particular message. I entered it in, and I recovered
25 the archived version of this message as it was originally

1 posted.

2 Q. And I'm going to direct your attention to 213,
3 Government's Exhibit 213.

4 MR. HERDMAN: If you can zoom down through those
5 pages.

6 BY MR. HERDMAN:

7 Q. And Government's Exhibit 213, is that a printout
8 of the webpage, the archived webpage you were able to
9 obtain from the Ekhlaas.com webpage?

10 A. Yes, it is.

11 Q. And specifically, this is the thread ending in
12 6181?

13 A. That's correct, this is the new -- the unique
14 numeric identifier 6181.

15 MR. HERDMAN: Your Honor, at this point in time
16 the government would offer Exhibit 213 into evidence.

17 THE COURT: It will be admitted.

18 BY MR. HERDMAN:

19 Q. If I could direct your attention to, I believe,
20 the third page of this exhibit, Mr. Kohlmann?

21 MR. HERDMAN: And Kevin, if you can just zoom in
22 on this portion here?

23 BY MR. HERDMAN:

24 Q. By the way, this -- what we're looking at here,
25 is this a posting that somebody put on this particular

1 webpage?

2 A. It's a thread. So it's an initial message that
3 someone posted, along with responses posted by other
4 Ekhlaas.com users.

5 Q. And I see on here, underlining a portion of the
6 text that begins with PM10:59. Can you explain for the
7 jury what that indicates to you?

8 A. Yes. This is the time date stamp that's on each
9 message that's posted on Ekhlaas letting you know when this
10 was first put online. If you notice, obviously the first
11 part's pretty easy PM, indicating in the evening, 10:59.
12 And then after that you see 2005, which is the year it was
13 posted; 02, which stands for February, and ten, so it's
14 February 10th, 2005 at 10:59 p.m.

15 Q. So that ten is the day of the month, not the
16 month itself?

17 A. No. Again, the month is the 02, February.

18 Q. All right.

19 MR. HERDMAN: If you could go back to the first
20 page of this, Kevin? All right.

21

22 BY MR. HERDMAN:

23 Q. Circling a photograph of a person on the first
24 page of this exhibit, do you know who that person is?

25 A. Yes.

1 Q. And what is that person's name?

2 A. Dr. A-Y-M-A-N, Al-Zawahiri. A-L, dash,
3 Z-A-W-A-H-I-R-I.

4 THE COURT: How do you pronounce that? 2.

5 THE WITNESS: Dr. Ayman Al-Zawahiri.

6 BY MR. HERDMAN:

7 Q. And Mr. Kohlmann, if I can direct your attention
8 now to Exhibit 74. And have you look --

9 MR. HERDMAN: Have you zoom in on the date to
10 subject from area. Okay.

11 BY MR. HERDMAN:

12 Q. Do you recognize this e-mail that I'm underlining
13 right here? Begins with E-K-H-L-A-A-S-E, for the record.

14 A. Yes, I do recognize that e-mail address.

15 Q. How do you recognize that e-mail?

16 A. I received e-mails from that e-mail address.

17 Q. What is that e-mail address?

18 A. In this point in 2005, that was the e-mail
19 address used by the administrators of the Ekhlaas forum.

20 Q. And what would be the reason that you would
21 receive an e-mail from the administrators of the Ekhlaas
22 website?

23 MR. HARTMAN: Objection.

24 THE COURT: One moment, please. Can you maybe
25 rephrasing the question? Are you asking why does he get

1 that?

2 MR. HERDMAN: I'll rephrase.

3 BY MR. HERDMAN:

4 Q. What were some of the reasons that you received
5 e-mail from the --

6 THE COURT: That was the objection, Mr. Hartman,
7 the form of the question.

8 MR. HARTMAN: I mean, I think we should approach.

9 THE COURT: Okay.

10 (A sidebar conference was had on the
11 record.)

12 MR. HARTMAN: First of all --

13 THE COURT: In other words, it's not why he gets
14 stuff. We already know what he --

15 MR. HARTMAN: Yeah, that's part of it, and second
16 of all, there's no -- there's no foundation for where it
17 comes from. I mean, the fact that he says he got e-mails
18 from this website doesn't tell us anything. We don't know
19 who that person is or what it is or --

20 THE COURT: Well, but he just testified to sort
21 of sign up and get e-mails. Isn't that in the record?
22 Maybe not from him, but somebody.

23 MR. HERDMAN: What I anticipate he's going to say
24 is, there was an update on the webpage. In fact, this
25 lands back to the actual website, this administrator, and

1 say there's something new that's been posted, he would then
2 go to the Ekhlaas.com webpage so it all links up.

3 THE COURT: I thought it was to the form of the
4 question, that's why.

5 MR. HARTMAN: Well --

6 THE COURT: But I think -- I think asking him why
7 you would get it leads to them as a predicate to asking
8 what he would get and -- it makes sense.

9 MR. HARTMAN: I would just -- while we're here, I
10 would object to him trying to tie that reason to this
11 e-mail, since he can't read anything in this e-mail except
12 for the --

13 MR. HERDMAN: I'm not going to do that.

14 MR. HARTMAN: That's fine.

15 (Sidebar conference concluded.)

16 THE COURT: You may proceed, and you may -- you
17 may re-- why don't you just renew the question.

18 BY MR. HERDMAN:

19 Q. Mr. Kohlmann, what were some of the reasons that
20 you received e-mails from this -- this e-mail address here?

21 A. Well, when you register as a user on Ekhlaas, one
22 of the options when you registered was checking a box
23 saying I would like to receive e-mail from administrators
24 of this forum. And the reason for that is just in case the
25 website would go offline or in case a major title was

1 released on the website or something big happened that the
2 administrators wanted to direct your attention to. This
3 would be a way for them to get in contact with you
4 directly, even though it was a mass mail list, basically,
5 but yeah.

6 Q. Did you receive e-mails from this particular
7 address that directed you to the Ekhlaas.com webpage?

8 A. I believe so, yes.

9 Q. I'd like to direct your attention now to Exhibit
10 165A-1D, which is the Internet cookie history from Marwan
11 El-Hindi's computer.

12 MR. HERDMAN: And Kevin, if you can take us to
13 page 141? And if you can zero in on this portion here?

14 BY MR. HERDMAN:

15 Q. Mr. Kohlmann, are you familiar with the website
16 address that's depicted in URL for this exhibit?

17 A. Yes, I am.

18 Q. Okay. Is that the same website that you obtained
19 the archived version of the thread ending 6181?

20 A. Www.Ekhlaas.com, yes.

21 Q. Is this particular URL, is that consistent with
22 the location of the Ekhlaas webpage in February and March
23 of 2005?

24 A. That's correct.

25 Q. And during that time period, was the Ekhlaas

1 webpage password protected?

2 A. Yes, it was.

3 Q. Did it require a user name and password to log
4 in?

5 A. That's correct, yes, it did.

6 Q. If I could direct your attention up one page to
7 page 140?

8 MR. HERDMAN: This portion here, Kevin, if you
9 can zoom in on that?

10 BY MR. HERDMAN:

11 Q. Do you recognize what's in that URL,
12 Mr. Kohlmann?

13 A. Yes, I do.

14 Q. Is that -- how is that related to the
15 www.Ekhlaas.com that we just viewed?

16 A. It's identical.

17 Q. Was this -- were there two -- were there multiple
18 domain names that were associated this particular webpage
19 Ekhlaas?

20 A. Yeah, just like your Muntada Al-Ansar, Ekhlaas
21 had several, and continues to have several different
22 similarly sounding domain names which all point back to the
23 same website.

24 Q. Was this particular URL or domain name, was that
25 consistent with the Ekhlaas webpage in March and -- March

1 and February of 2005?

2 A. Yes, it was.

3 Q. If I can direct your attention to page 24 of the
4 same exhibit. All right. Do you recognize the URL that's
5 depicted in this portion of the exhibit?

6 A. Yes, I do.

7 Q. Okay. And this one is www.alekhlaas.net?

8 A. That's correct.

9 Q. And do you see the date here? And the last date
10 that this particular cookie was accessed was February 3rd
11 of 2006?

12 A. That's correct. Yes.

13 Q. Was this particular domain name alekhlaas.net,
14 was that consistent with the Ekhlaas webpage in early 2006?

15 A. That's correct, yes.

16 Q. Even though this was a different -- different
17 domain name than the Ekhlaas.com?

18 A. Yeah, they're a synonym. In different points in
19 time, one points to it, and then one will expire, and
20 there'll be another one, but it's the same underlying
21 website. It's just the name for it, that's all.

22 MR. HERDMAN: If we can move on another website.
23 You can take this out.

24 BY MR. HERDMAN:

25 Q. Mr. Kohlmann, are you familiar with a website

1 known as Ansar Jihad?

2 A. Yes.

3 Q. Was that website password protected?

4 A. No, it was not.

5 Q. Did it require any kind of registration?

6 A. It didn't require it, but it offered that option.

7 Q. And if -- if one were to register with the Ansar
8 Jihad webpage, what would that enable one to do?

9 A. The purpose of registering with Ansar Jihad was
10 that you would put in your e-mail address and then Ansar
11 Jihad would then send you each day copies of the most
12 important videos, communiques from insurgent groups, from
13 Mujahideen organizations, mostly Arabic, but would download
14 links, et cetera, so it would be delivered directly to your
15 e-mail box.

16 Q. I'm going to direct your attention to Exhibit 62.
17 Do you recognize this?

18 A. Yes.

19 Q. And what does this appear to be?

20 A. This is the actual website for Ansar Jihad.

21 MR. HERDMAN: And just for the record, Your
22 Honor, this is a printout that was given to Darren Griffin
23 by Marwan El-Hindi on February 16th of 2005.

24 MR. EL-KAMHAWEY: Objection, Your Honor. There's
25 no testimony to that.

1 THE COURT: I will let you answer -- well, why
2 don't you just --

3 MR. HERDMAN: Okay.

4 THE COURT: Disregard that, and the jury will
5 recall what the evidence is in that regard and counsel, of
6 course, can argue about it. Okay.

7 BY MR. HERDMAN:

8 Q. If I can direct your attention to the bottom
9 portion here of this website, Mr. Kohlmann.

10 A. Yeah.

11 MR. HERDMAN: If we can zoom in on that? No, the
12 whole bottom half of that piece of paper right there.
13 Okay.

14 BY MR. HERDMAN:

15 Q. Now, Mr. Kohlmann, do you see a date here which
16 is February 16th of 2005?

17 A. Yes.

18 Q. And then you see what appears to be a web address
19 or URL?

20 A. That's correct.

21 Q. Okay. Is that URL, is that consistent with the
22 location of the Ansar Jihad webpage on February 16th, or
23 thereabouts, of 2005?

24 A. Yeah, at that point in time that's where the
25 website was located.

1 Q. And if I can show you --

2 MR. HERDMAN: If you can go back up there? If I
3 can show you Exhibit 62A? Scroll down. And this is a
4 translation of Exhibit 62. Go to the third page.

5 BY MR. HERDMAN:

6 Q. Do you recognize any of the files on this third
7 page of Exhibit 62A?

8 A. Yes, I do.

9 Q. Okay. Now, specifically, I'd like to direct your
10 attention to two files. The first one I'm marking right
11 there. Can you just name that file for the jury?

12 A. Yes, in English the title is *Russian Hell*. In
13 Arabic it is known as *Jahesteshm*, J-A-H-E-S-T-E-S-H-M.
14 *Al-Rusjah*. A-L, dash, R-U-S-J-A-H. *Jahesteshm Al-Rusjah*
15 means "Russian Hell" in Arabic. It's, again, a video
16 recording.

17 Q. And with respect to what I'm marking now, it says
18 *Operation of Mujahideen Entering Dagestan*. Are you
19 familiar with a file that goes by that name?

20 A. Yes, I am.

21 Q. Are you familiar with one of the file names of
22 that particular video is?

23 A. Yes, *Dagestan 1*.

24 Q. I don't know if you said this or not, *Russian*
25 *Hell* was actually more than one part, several parts?

1 A. It's actually -- they've released several. It's
2 a sequel, so they released part one and then part two a
3 couple years later, and then each year they release a new
4 version. It's kind of like *Rambo* or *Rocky*.

5 Q. And for *Russian Hell Part One*, the -- what would
6 be -- I don't know if you said this or not, but there
7 were -- was there a file name called *Jahesteshm* 1 that's
8 associated with *Russian Hell Part One*?

9 A. Yeah, frequently, when it comes to individuals
10 who are Arabic speakers, when they're dealing with files,
11 with this particular file, instead of being named *Russian*
12 *Hell*, they'll name it *Jahesteshm Al-Rusjah* or something
13 with *Jahesteshm* because that's -- *Jahesteshm*, just means
14 "hell."

15 Q. Okay.

16 MR. HERDMAN: And if -- Kevin, if you can put
17 Exhibit 62A on the left-hand side of the screen? And then
18 on the right-hand side of the screen, can you bring up
19 Exhibit 77-1AD, which is a document that was obtained from
20 Marwan El-Hindi's laptop computer? I'm sorry, on the
21 left-hand side, could you put up Exhibit 62?

22 BY MR. HERDMAN:

23 Q. Mr. Kohlmann, directing your attention to these
24 two documents that are on the screen. Do these appear to
25 be similar to you in any way?

1 A. Yes.

2 MR. HERDMAN: And if I could bring up now --
3 actually on the one on the right, 77-1AD. Kevin, if you go
4 down to the third page of that document? Okay, and you can
5 zoom in on this portion here.

6 BY MR. HERDMAN:

7 Q. Do you see a URL or web address on that?

8 A. Yes, I do.

9 Q. Are you familiar with that URL or web address?

10 A. Yes, Al-Ansar.tk.

11 Q. Is that URL or web address, is that consistent
12 with the Ansar Jihad webpage at a particular point in time?

13 A. That's correct. Subsequent to this other
14 website, they moved the website and hosted it on this
15 domain name here.

16 Q. Was this particular domain, www.Al-Ansar.tk,
17 would that host the Ansar Jihad webpage in early 2006?

18 A. Yes, it did.

19 Q. All right.

20 MR. HERDMAN: If I could bring up on the
21 left-hand side, Kevin, 62-A, and on the right-hand side
22 77-1AD-1? There's two translations of those documents.
23 And if you can go to the second page of each document
24 Kevin? Okay. If you can zoom in a little bit on the one
25 on the right?

1 BY MR. HERDMAN:

2 Q. Mr. Kohlmann, I ask you to take a couple seconds
3 and compare what's visible in both of these documents here.
4 Do you see any similarities between these two documents?

5 A. Yes.

6 Q. Is it -- is it based on the movie names, as
7 they're called on here?

8 A. Yeah, these movies that are listed here, they're
9 unique movies that I recognize and I have copies of. It
10 appears that the page on the right is the updated version
11 of the page on the left. In other words, the same content
12 plus extra movies that have been added over time.

13 Q. You said before that you recognize that video
14 that was entitled *Russian Hell Part One*?

15 A. Russian Hell in Chechnya.

16 Q. And that video was available on the Ansar
17 Jihad --

18 THE COURT REPORTER: Say that again?

19 BY MR. HERDMAN:

20 Q. That video, *Russian Hell*, was available on the
21 Ansar Jihad webpage in February of 2005?

22 A. That's correct.

23 Q. And specifically, it was available off the
24 webpage on February -- February 16th of 2005?

25 A. That's correct.

1 Q. Now let's direct your attention to a clip from
2 that date, February 16th, 2005.

3 MR. HERDMAN: And this is 28-69185-17A.

4 (Audio playing.)

5 BY MR. HERDMAN:

6 Q. Now, Mr. Kohlmann, you've listened to that audio
7 recording before?

8 A. Yes.

9 Q. And other than that train noise that was in the
10 background, were you able to identify anything that was
11 taking place in the background, other than the defendants
12 and Mr. Griffin talking?

13 A. Yeah, actually, there's a video playing in the
14 background that I recognize.

15 Q. And were you able to recognize which video that
16 was?

17 A. Yes.

18 Q. Was it *Russian Hell Part One*?

19 A. It was a particular scene from *Russian Hell Part*
20 *One*, yes.

21 Q. Before we get to that I'd just like to direct
22 your attention, again, to -- actually, for the first time
23 today, direct your attention to Exhibit 165F-1. This is
24 the Real Player history from Marwan El-Hindi's computer.

25 MR. HERDMAN: And if you can take us to page 85?

1 And if you can focus in on this, here?

2 BY MR. HERDMAN:

3 Q. I believe, Mr. Kohlmann, you testified earlier
4 that *Russian Hell Part One*, one of the file names for that
5 video is *Jahesteshml*?

6 A. Yes, Hell1.

7 Q. Okay. And is that what you see on the screen
8 here?

9 A. Yes, it is.

10 Q. And based on this -- this created date for this
11 link here, which is February 16th, 2005, is that consistent
12 with *Russian Hell Part One* being played on February 16th,
13 2005?

14 A. Yes, it is.

15 Q. Now, were you -- were you able to obtain a copy
16 of *Russian Hell Part One* to play in court here today?

17 A. Yes, I was.

18 MR. HERDMAN: And I'll just direct counsel's
19 attention to this, Your Honor, before I proceed with this.

20 THE COURT: You may.

21 MR. HERDMAN: May I approach the witness, Your
22 Honor?

23 THE COURT: Yes.

24 BY MR. HERDMAN:

25 Q. And that's Government's Exhibit 214, do you

1 recognize Government's Exhibit 214?

2 A. Yes, I initialed it and put the date.

3 Q. What is contained on that CD?

4 A. This is a high resolution copy of *Jahesteshm*
5 *Al-Rusjah, Hell in Chechnya Part One.*

6 MR. HERDMAN: And Your Honor, with The Court's
7 permission I'd ask it to be played.

8 THE COURT: How long is this going to take?

9 MR. HERDMAN: It's a three-minute portion.

10 THE COURT: I may have to step down. I'm missing
11 a meeting. I may have to stop, call them, and tell them
12 why. I'll literally just call in and tell them. About a
13 two or three-minute break.

14 MR. HERDMAN: Your Honor, we chose the wrong
15 player here.

16 (Video playing.)

17 BY MR. HERDMAN:

18 Q. Now, Mr. Kohlmann, a portion we just heard
19 included a song?

20 A. Uh-huh.

21 Q. You didn't hear that song playing in that
22 particular segment, did you?

23 A. No. No.

24 Q. Do you -- do you recognize this person that's
25 depicted on the screen right here with a sort of gray

1 camouflage on?

2 A. This person right --

3 Q. What's that person's name?

4 A. His real name is Samir, S-A-M-I-R, Al-Suwailem.

5 A-L, dash, S-U-W-A-I-L-E-M. He's more -- he's better known
6 as -- Ibn-Ul-Khattab, I-B-N, dash, U-L, dash, K-H-A-T-T-A-B
7 also sometimes just said as Khattab.

8 This is him again right here.

9 (Video playing.)

10 A. This is Khattab.

11 (Video playing.)

12 MR. HERDMAN: And Your Honor, for the record, we
13 pause that at the 10 minute, 30-second mark. Do you want
14 me to wait, Your Honor?

15 THE COURT: Go ahead.

16 BY MR. HERDMAN:

17 Q. All right. Now, you mentioned earlier --

18 MR. HERDMAN: Can we go back to Exhibit 165F-1.
19 Can you try to put 165F on the left-hand side, and on the
20 right-hand side, can you put Exhibit 62A, and go down to
21 the third page of 62-A? And on the left-hand side, Exhibit
22 165F, can you go to page -- I believe it's page 660, 55.
23 Go up one page. Go up to page 50, I'm sorry. One more
24 page down, page 49.

25 I apologize, Your Honor.

1 THE COURT: No problem.

2 MR. HERDMAN: One more. Kevin, if you can focus
3 in at the one the -- on the bomb?

4 BY MR. HERDMAN:

5 Q. You testified before with respect to this video
6 here, the *Operation of Mujahideen Entering Dagestan*, you
7 mentioned that one of the file names associated with that
8 particular video was *Dagestan1*?

9 A. Yeah, it was divided into two parts *Dagestan1* and
10 *Dagestan2*.

11 Q. So the left-hand side, that's the Real Player
12 history from Mr. El-Hindi's computer. Does that indicate
13 that *Dagestan1* was played on February 16th, 2005, as well?

14 A. Yes, that's correct.

15 Q. Mr. Kohlmann, are you familiar with a group known
16 as the Islamic Army of Iraq?

17 A. Yes, I am.

18 Q. Does that go by its initials, IAI?

19 A. Yes.

20 Q. Did this particular group, during the period
21 2004, 2005, did it run any electronic mailing lists?

22 A. Yes, it had a subscription mailing list.

23 Q. Are you familiar with the concept of Yahoo
24 Groups?

25 A. Yes, I am.

1 Q. Is that a way of getting onto a mailing list, an
2 electronic mailing list?

3 A. It's actually a service that offers people, for
4 free, the ability to set up their own mailing list, their
5 own electronic mailing list.

6 Q. Does it require an individual to actually
7 subscribe to that particular mailing list?

8 A. I mean, in order to set it up or in order to
9 receive the e-mails from the list?

10 Q. In order to receive the e-mails from the list.

11 A. If you want to join a Yahoo group list and get
12 the e-mails from it, you have to enter a valid e-mail
13 address and you have to, literally, subscribe.

14 Q. Are you familiar with whether or not the Islamic
15 Army of Iraq had a mailing list?

16 A. Yes, this --

17 Q. Was that through Yahoo Groups?

18 A. Yes.

19 Q. Were you a subscriber through that particular
20 mailing list?

21 A. Yes.

22 Q. What were the steps you had to go through?

23 A. First of all, you had to know it existed, but
24 once you knew it existed, you could go to a particular
25 location on the Yahoo Groups website, which was the home

1 page for their group. At that point, they would basically
2 ask you for your e-mail address. You put in your e-mail
3 address. You hit a button, then that sends an e-mail to
4 your e-mail address saying, Do you confirm that you want to
5 be subscribed to this e-mail list? If you hit "confirm,"
6 that's it, you're done. As soon as they send out a
7 message, you will be one of the recipients.

8 Q. What was the reason that you subscribed to the
9 Islamic army of Iraq mailing list on Yahoo Groups?

10 A. It was a good way of getting copies of their
11 official statements.

12 MR. HARTMAN: Your Honor, I'm going to object on
13 official statements.

14 THE COURT: I would agree. Good way of getting
15 material from that source.

16 BY MR. HERDMAN:

17 Q. With respect to -- I'll actually direct your
18 attention to Exhibit 73, Mr. Kohlmann.

19 MR. HERDMAN: Okay, and Kevin, if you can zero in
20 on the address portion at the top there? Okay.

21 BY MR. HERDMAN:

22 Q. Just focusing on the subject line here,
23 Mr. Kohlmann, say you were a subscriber to the Islamic Army
24 of Iraq's mailing list.

25 A. That's correct.

1 Q. Does this particular subject line tell you
2 anything with respect to any of the individuals who might
3 have received this particular e-mail?

4 A. Yeah. This message, if you look at brackets in
5 the subject line, you'll see an opening bracket, then IAI
6 Iraq, and closed bracket, that is -- that is contained in
7 every subject line of the message sent over the Islamic
8 Army of Iraq's mailing list, so if you receive an e-mail
9 from them or you receive an e-mail from their mailing list,
10 first thing will say in brackets is, The subject is,
11 bracket, IAI Iraq, closed bracket.

12 Now, this here, if you notice says, for IAI Iraq,
13 it says R-E, what this means is that someone replied to a
14 message that was originally posted on IAI Iraq, replied to
15 it directly. And so this is a -- this -- excuse me, this
16 is, in essence, a conversation that is taking place based
17 upon something that was posted on the IAI Iraq mailing
18 list.

19 Q. And would this person here in the to line, would
20 that person have to be a subscriber to this mailing list in
21 order to receive this message, in your opinion?

22 A. Yeah. Yes.

23 Q. If I could direct your attention now to a clip
24 from February 25th of 2005?

25 MR. HERDMAN: This is designated as

1 EK-10-69440-4A-1.

2 (Audio playing.)

3 BY MR. HERDMAN:

4 Q. Mr. Kohlmann, do you have any opinion as to what
5 Marwan El-Hindi was describing in that clip?

6 A. Yes.

7 Q. What is that opinion?

8 A. The IAI Iraq mailing list, how to subscribe to
9 it.

10 Q. And that was on the Yahoo Groups, again?

11 A. Yeah, that was hosted on Yahoo Groups, exactly.

12 Q. If I could direct your attention to Exhibit 79A?

13 THE COURT: And I have to step down. It'll be
14 just for a moment.

15 (Brief recess.)

16 THE COURT: You may be seated and you may resume.
17 And I apologize for the delay.

18 BY MR. HERDMAN:

19 Q. When we left off, Mr. Kohlmann, I think we were
20 talking about the Islamic Army of Iraq's Yahoo Groups
21 electronic mailing service. I'd like to direct your
22 attention to 79A.

23 MR. HERDMAN: And if you can just focus in on the
24 top half of the page here?

25 BY MR. HERDMAN:

1 Q. Mr. Kohlmann, if you can just take a moment to
2 look at this exhibit. And then if I can direct your
3 attention to this particular subject line, here?

4 A. Sure.

5 Q. What does that -- when you compare that subject
6 line that is marked on top with the subject line on the
7 bottom that I'm marking?

8 A. Yes.

9 Q. What does that indicate to you with respect to
10 this e-mail and whether or not any of the users here were a
11 subscriber to the Islamic Army of Iraq electronic mailing
12 service?

13 A. Sure. This message was -- originally, when it
14 was first posted on another Yahoo E-group called
15 "ALafghan-ALarab," then that message was forwarded from
16 that news group onto the IAI mailing list, and then it was
17 forwarded out to all the IAI subscribers as well.

18 If you look there, you can see IAI in bracket,
19 and after that, you'll see RE, and then a colon,
20 ALafghan-ALarab, what that tells us is that this was
21 forwarded from one group to another to all the recipients
22 of that group. In order to receive this message, you would
23 you would most likely, or would certainly have to be a
24 subscriber to IAI Iraq because this message wasn't saved
25 from ALafghan-ALarab, it was saved from IAI Iraq.

1 Q. And the date of this particular e-mail was
2 February 25th, 2005?

3 A. That's correct, yes.

4 Q. And that's the same date of the segment that we
5 just listened to?

6 A. That's correct, yes.

7 Q. All right. Mr. Kohlmann?

8 MR. HERDMAN: Oh, Your Honor, by the way, before
9 I move on Exhibit 214, I forgot to offer it into evidence.
10 That was the compact disc containing a copy of *Russian Hell*
11 *Part One*.

12 THE COURT: It will be admitted.

13 BY MR. HERDMAN:

14 Q. Okay. And Mr. Kohlmann, this is the final sort
15 of block of testimony, I guess. Are you familiar with the
16 website known Al Masada?

17 A. Al Masada, yes.

18 THE COURT: And about how long do you think this
19 be?

20 MR. HERDMAN: Probably half-hour, charitably.

21 THE COURT: Then why don't we break for lunch.

22 (A brief recess was taken for lunch.)

23 THE COURT: Mr. Kohlmann, you remain under oath.

24 And Mr. Herdman, you may continue.

25 MR. HERDMAN: Thank you, Your Honor.

1

2 BY MR. HERDMAN:

3 Q. Mr. Kohlmann, when we left off, I had asked you
4 whether you were familiar with a website known as Masada.

5 A. Yes, I am.

6 Q. And is that in late 2004 and in the spring of
7 2005, was that Masada webpage, was that password protected?

8 A. Yes, initially when it started off, there was
9 open registration and it quickly closed.

10 Q. And when did that Masada webpage start off?

11 A. I believe it started in late 2004, early 2005,
12 I'm not sure of the exact date.

13 Q. But at some point in time, it became closed to
14 registration?

15 A. Eventually, yes.

16 Q. And was it possible to -- just like you testified
17 to with respect to some other websites, was it possible to
18 receive e-mail updates from the administrator of the Masada
19 webpage?

20 A. Yeah, it's the standard software, so it doesn't
21 really matter what forum it is. It always offers you that
22 option if you click in the check box to receive e-mails
23 from administrators.

24 Q. And did the Masada webpage, similar to the
25 Ekhlaas webpage, or the Muntada Al-Ansar webpage, did the

1 Masada webpage ever have to move actual domains that were
2 hosting it on the Internet?

3 A. Yeah, for a brief period of time, they lost their
4 domain name.

5 Q. And let me direct your attention now to Exhibit
6 61.

7 MR. HERDMAN: And Kevin, if you can focus in on
8 the lower, left-hand corner there?

9 BY MR. HERDMAN:

10 Q. Do you recognize this portion of Exhibit 61?

11 A. Yes, I do.

12 Q. And what is that?

13 A. This is a URL or a -- the address of a particular
14 message thread posted on the Al Masada webpage during the
15 time that they lost their domain.

16 MR. HERDMAN: Can you go back out to the overall
17 exhibit?

18 BY MR. HERDMAN:

19 Q. Just looking at this what's depicted there in
20 Exhibit 61, do you recognize Government's Exhibit 61 as the
21 Masada webpage?

22 A. Yes.

23 Q. And what is it that you recognize? Is there
24 something distinctive about the way it appears?

25 A. In this early version of the Masada webpage,

1 you'll notice the logo at the top. The logo consists --
2 it's a unique logo that they put in themselves where they
3 took pictures of various different individuals at the head
4 of the Mujahideen organizations, so you have, Abu Musab,
5 A-B-U, M-U-S-A-B, Al-Zarqawi, A-L, dash, Z-A-R-Q-A-W-I.

6 Q. Let me stop you for a second.

7 MR. HERDMAN: Kevin, can you focus in on the
8 photo portions?

9 BY MR. HERDMAN:

10 Q. Do you recognize Abu Musab Al-Zarqawi in this
11 portion of the exhibit?

12 A. Yes, I do.

13 Q. Could you please point on the monitor to that
14 individual?

15 A. There are actually two photos in this. The first
16 is right here. Right there, that's him, and then this is
17 also him right here.

18 Q. Okay. And do you recognize -- do you recognize
19 the photograph of Osama bin Laden?

20 A. Once again, there are actually two photos of him.
21 Here, the one is a little bit difficult to see. Here he's
22 walking down a mountain, and he's also here in the center.

23 Q. And do you recognize the picture of who you
24 testified before, Ayman Al-Zawahiri?

25 A. Yeah, Doctor Ayman Al-Zawahiri. Again, same

1 deal, there are two photos of him here. First, one at the
2 top, right here, and then you'll see right below, right
3 there.

4 Q. Okay. So this Masada webpage, there was a period
5 of time where it was available at this -- the web address
6 that's in the lower, left-hand corner here, which is
7 starting 66.148; is that correct?

8 A. That's correct, yes.

9 Q. Was there a regular domain name with this address
10 number that was associated this Masada webpage?

11 A. Actually, two different ones, yes.

12 Q. What were those -- what were the domain names?

13 A. AlMasada.com and .net, but had a very specific
14 spelling. A-L-M-2-S-D-A.net or A-L-M-2-S-D-A.com, C-O-M.

15 Q. If I could direct your attention now to
16 Government's Exhibit 76-1AQ? It's a computer exhibit. And
17 this is an e-mail inbox. Do you recognize this bottom
18 e-mail here?

19 A. Yes, I do.

20 Q. What do you recognize about that e-mail?

21 A. That is the e-mail address of the administrators
22 of the Al Masada forum.

23 Q. And you said it was the domain name was normally
24 either A-L-M-2-S-D-A.net?

25 A. Yes or .com.

1 MR. HERDMAN: So can you put this on the
2 left-hand side of the screen? And then if you can put
3 Exhibit 61 on the right-hand side of the screen? Don't
4 worry about it, just put Exhibit 61. There we go.

5 BY MR. HERDMAN:

6 Q. Now, there's been testimony Mr. Kohlmann that
7 this A-L-M-2-S-D-A.net, in fact, is the Masada webpage
8 that's depicted here in Government's Exhibit 61?

9 A. Yes, it's identical. The only difference is the
10 one in 61 doesn't have a domain name, but it's the same
11 exact website.

12 MR. HARTMAN: Objection.

13 THE COURT: First of all, I did not hear the
14 answer, so are you objecting to the answer or the question?

15 MR. HARTMAN: Well, I'm objecting to both, I
16 guess. It just -- to the extent we can differentiate
17 between the website and the whole thread.

18 THE COURT: Why don't you ask it differently?

19 MR. HERDMAN: I guess just to be clear, Kevin, if
20 he can focus in on this lower, left-hand corner here? All
21 right.

22 BY MR. HERDMAN:

23 Q. Is it your understanding, Mr. Kohlmann, that this
24 portion, that is to say, part of 66.148.85.35/BB, that that
25 is, in fact, a domain name of the Masada webpage?

1 A. Well, it's the IP address of the Masada webpage.
2 It's like telephone number. Instead of typing in a name,
3 you type in a phone number, but it's identical against the
4 exact same website.

5 Q. And this portion here, which says
6 "showthread.php?T=7821," that would direct you to a
7 particular thread on that webpage?

8 A. Exactly, a message and then various responses
9 that had been posted by other users to that.

10 MR. HERDMAN: And if you can go back up to 611 on
11 the left, Kevin?

12 BY MR. HERDMAN:

13 Q. And is it your testimony, Mr. Kohlmann, that this
14 was depicted in Government's Exhibit 61, here? That is to
15 say, the content of the Masada webpage, that that was on
16 the same webpage as this Al Masada.net that's depicted on
17 the right-hand side?

18 A. Yeah, it's all one forum. It's Al Masada.

19 Q. Now, you see on the right-hand side here, there's
20 a, what appears to be an e-mail with a subject line. Were
21 you a subscriber to the Al Masada webpage?

22 A. Yes, I was. Although I'm not sure if I was on
23 this particular date.

24 Q. What would be some of the reasons that you
25 received e-mails from the Al Masada webpage?

1 MR. HARTMAN: Objection.

2 THE COURT: I'm sorry. Basis?

3 MR. HARTMAN: Well, this goes to the intent.

4 THE COURT: Again, I think that it is same
5 ruling. They're his view.

6 MR. EL-KAMHAWEY: Your rulings were prior that
7 he.

8 MR. HARTMAN: Wait, wait, we should approach.

9 THE COURT: Why don't you approach?

10 (A sidebar conference was had on the
11 record.)

12 THE COURT: What was the question? What were
13 your reasons --

14 MR. HERDMAN: What were some of the reasons that
15 you received an e-mail from the Al Masada webpage?

16 MR. HARTMAN: What would be -- what were the
17 reasons he sent you the e-mail.

18 THE COURT: That's how I understood the question,
19 but if you want to rephrase it, that's fine.

20 MR. HERDMAN: It's the same question I asked with
21 respect to, I believe it was Ekhlaas, Your Honor.

22 THE COURT: I guess so, that's why I was a little
23 startled by -- I couldn't think of what the problem was.
24 Sorry about that.

25 MR. HARTMAN: That's all right.

1 THE COURT: Why don't you rephrase.

2 (Sidebar concluded.)

3 THE COURT: Why don't you just rephrase the
4 question. I'll sustain the objection, but it's to the form
5 of the question.

6 BY MR. HERDMAN:

7 Q. Mr. Kohlmann, I think you just testified that
8 you, at one point in time, you were a subscriber to the
9 Masada webpage?

10 A. That's correct, yes.

11 Q. And you received e-mails from the administrator
12 of the Masada webpage?

13 A. That's right.

14 Q. And did the address you received them from look
15 similar to what's depicted in Government's Exhibit 76-1AQ?

16 A. The only possible difference would be -- I'm
17 sorry -- the only possible difference would be if it said
18 .com instead of .net as they change their domain over time,
19 but yeah, that's the address.

20 Q. And what were some of the e-mails that you
21 received -- what were some of -- what were some of the
22 reasons that were indicated within the content of those
23 e-mails that you receive those e-mails, what was in those
24 e-mails?

25 A. If the website was changing domain, if there was

1 a particular item that had been added, a new video or
2 particularly important new communique that had been added
3 to the website that administrators want to draw attention
4 to, but usually had to do with administrative matters, if
5 the account was suspended or if the website moved to a
6 different domain, to tell you where to go.

7 Q. And now I'd like to direct your attention once
8 again, to Exhibit 165A-1B, which is the Internet cookie
9 history on Marwan El-Hindi's computer.

10 MR. HERDMAN: If you go to page 138? 165A-1B and
11 go to page 138. And it's this portion here.

12 BY MR. HERDMAN:

13 Q. And do you see what's listed in the URL there,
14 Mr. Kohlmann?

15 A. Yes.

16 Q. Is that consistent with the IP address that was
17 used by the Masada webpage?

18 A. Yes, for a particular period of time in early
19 2005, yes.

20 Q. And I'd like to direct your attention to page 149
21 of the same exhibit. And do you recognize what's in the
22 URL portion of this portion of the exhibit?

23 A. Yes, I do.

24 Q. And what is that?

25 A. This is the actual domain of the AlMasada.net

1 website A-L-M-2-S-D-A.net.

2 Q. All right.

3 MR. HERDMAN: And Kevin, can you put that on the
4 left-hand side, and then on the right-hand side put Exhibit
5 61 back up? And if you can zoom in on this portion down
6 here?

7 BY MR. HERDMAN:

8 Q. So again, Mr. Kohlmann, your testimony is, with
9 respect this portion of the address there, that's depicted
10 in Exhibit 61, that's actually the same website as what's
11 visible in Exhibit 165A-1B, the cookie related to
12 AlMasada.net?

13 A. That's correct, yes.

14 Q. And I'm going to direct your attention now to,
15 Mr. Kohlmann, to February 8th of 2005.

16 MR. HERDMAN: And I have a couple recordings here
17 that I'm going to play. The first is designated as
18 EK-769440-1A-1.

19 (Audio playing.)

20 MR. HERDMAN: And can you please put Exhibit 61
21 back up?

22 BY MR. HERDMAN:

23 Q. And based on that description by Mr. El-Hindi of
24 the webpage, Mr. Kohlmann, do you believe he was referring
25 to this Masada webpage?

1 MR. BOSS: Objection, Your Honor.

2 MR. HARTMAN: Objection.

3 THE COURT: Come up for a moment.

4 (A sidebar conference was had on the
5 record.)

6 THE COURT: I think so, it probably speaks for
7 itself. It's a little hard, arguably, circumstantially,
8 the evidence, that might be what he's talking about, but
9 are you going to argue that?

10 MR. HERDMAN: If I can, I'm just going to, again,
11 ask him whether it's Osama bin Laden's picture on this
12 Ansar query.

13 THE COURT: Okay. That's all.

14 MR. HERDMAN: I'll move on.

15 THE COURT: We've already seen the double
16 pictures on these.

17 MR. HERDMAN: I can move on. Thank you.

18 (Sidebar conference concluded.)

19 THE COURT: Ladies and gentlemen, I'm sustaining
20 the objection to the last question and you will be able to
21 disregard it, and it's up to you to interpret the evidence.

22 You may proceed.

23 BY MR. HERDMAN:

24 Q. And now I'd like to direct your attention to
25 another recording that was made on February 8th of 2005.

1 MR. HERDMAN: This is designated as
2 EK-7-69440-2A.

3 || (Audio playing.)

4 BY MR. HERDMAN:

5 Q. And did you hear Mr. El-Hindi say, Muntada Al
6 Masada?

7 A. Yes.

8 Q. Is that the Masada webpage in your opinion?

9 A. Again, *Muntada* just means "forum," so the Al
10 Masada forum, it's the same thing.

11 MR. HERDMAN: If you go to Exhibit 61, page 2?
12 And if you could try to zoom in on this? It's hard to
13 read, but if you can zoom in on that portion right there?
14 Okay.

15 || BY MR. HERDMAN:

16 Q. Can you see that on the monitor there
17 Mr. Kohlmann?

18 A. Not really.

19 MR. HERDMAN: Why don't we go to 61A, the second
20 page.

22 | BY MR. HERDMAN:

23 Q. Do you recognize the name of any files that are
24 depicted on the screen?

25 A. Yes.

1 Q. And is that "martyr domination" or "hero
2 operation vest preparation"?

3 A. That's correct, yes.

4 Q. Based on your experience with this website, the
5 way that this "martyr domination" or "hero operation vest
6 preparation" appears on the screen there, how would a user
7 go about actually accessing that particular file?

8 A. Sure. These forums don't have enough space to
9 hold large volumes of video on their own server, so they
10 put this video or audio recording, whatever large file it
11 is, onto another server like a free file hosting service,
12 any free service that will allow them to temporarily host a
13 file on there. Then what they do, they get that address,
14 when that file is now posted on that free server, and they
15 post a link to it on the forum. So if you don't have a
16 link to that file on some free server, you probably
17 wouldn't be able to find it because a cabin name that
18 strikes immediately, 195.zip, doesn't say what's in there,
19 but by going on the forum, you can find the link to reach
20 the file which is hosted on another location.

21 And if you look at these two addresses right
22 here, tinburg dot -- excuse me, tinbird, T-I-N-B-I-R-D,
23 .dip.jp, and wansan, W-A-N-S-A-N, .ddo.jpo.jp, these are
24 two servers that are actually located Japan.

25 And again, what the idea behind the these

1 information servers are this is a free place for anyone to
2 temporarily host a large file for others to download. And
3 these two were frequently used on forums like the Masada
4 forum by users on the Masada forum, by users on similar
5 forums.

6 Q. And would the same be true -- although, would the
7 same be true, these two URLs located down here, one
8 beginning with the word "sniper" and one beginning with
9 www.1km?

10 A. Exactly, yeah.

11 Q. Finally, I'd like to direct your attention to
12 April 13th 2005 to some recordings made on that date.

13 MR. HERDMAN: If you can go to the clip that's
14 designated as EK-48-69185-3A-3?

15 (Video playing.)

16 BY MR. HERDMAN:

17 Q. Can you see what's on the computer screen there,
18 Mr. Kohlmann?

19 A. It appears that someone is logging out of a Yahoo
20 mail screen.

21 THE COURT: Out of a Yahoo?

22 A. A Yahoo e-mail log in. It looks like someone's
23 logging out of a Yahoo e-mail log in or logging in, I
24 should say.

25 (Video playing.)

1 BY MR. HERDMAN:

2 Q. Mr. Kohlmann, when Mohammed Amawi said something
3 about numbering --

4 A. Uh-huh.

5 Q. -- and he point towed a portion of the screen
6 that was in that sort of upper, left-hand corner, the
7 computer screen, what part of the computer would that -- if
8 there's a webpage that's up, what part of the computer
9 would he be pointing to there?

10 A. That's the address bar. That shows the location
11 of where you're at. So in other words
12 <http://Microsoft.com>, 1.1.1.1, whatever the location is you
13 are on the Internet, it would appear in that address bar at
14 the top of the screen.

15 MR. HERDMAN: And zoom in a little bit.

16 BY MR. HERDMAN:

17 Q. So if an IP address consisted of numbers,
18 Mr. Kohlmann, that would appear in the upper, left-hand
19 corner of that particular computer screen?

20 A. That's correct, yes.

21 Q. And do you recognize the webpage that's depicted
22 on the computer right there?

23 A. Yes. Not right now, but several seconds later,
24 if you keep playing this -- if you want to keep playing it
25 a few seconds.

1 MR. HERDMAN: Yeah, why don't we keep playing it.

2 (Video playing.)

3 A. If you pause right there. Right there, you'll
4 see right in the middle of the screen, there's an image on
5 the screen, inside there, there's a circle. Shortly after
6 you saw this page from the Al Masada forum right here -- I
7 don't know what Exhibit Number is offhand.

8 Q. Exhibit 61 on the right-hand side.

9 A. Shortly after this webpage March of 2005, the Al
10 Masada webpage was redesigned and they added a new logo,
11 the logo that they added, the official Al Masada logo, the
12 circle you see right there in the middle of the screen.

13 MR. HERDMAN: And finally, if you can bring up on
14 the left-hand side, Kevin, can you bring up the recording
15 designated as EK-48-69185-4A-1? And on the right-hand
16 side, can you bring up Exhibit 165A-1B page 149?

17 MR. HARTMAN: Can you get those exhibit numbers
18 again, Mr. Herdman?

19 MR. HERDMAN: On the left-hand side, it's
20 EK-48-69185-4A-1.

21 MR. HARTMAN: And that date is?

22 MR. HERDMAN: That's from April 13th, 2005.

23 MR. HARTMAN: Okay.

24 MR. HERDMAN: And on the right, it's Exhibit
25 165A-1B, page 149.

1 MR. HARTMAN: Thanks.

2 MR. HERDMAN: And ask Mr. Baker to zoom in on the
3 second URL down from the top there.

4 And if you'll put the head phones on for the
5 clip.

6 (Audio playing.)

7 BY MR. HERDMAN:

8 Q. Mr. Kohlmann, finally, the -- do you have an
9 opinion as to whether the webpage that Mr. Amawi just
10 spelled out for Darren Griffin is the same as the webpage
11 that's depicted on the right-hand side of the screen, which
12 is from the cookie history of Marwan El-Hindi's computers?

13 A. I believe it's the same.

14 MR. HERDMAN: I have nothing further, Your Honor.

15 THE COURT: Okay. Cross-examination?

16 MR. BRYAN: Thank you for your testimony

17 Mr. Kohlmann. We have no questions for Mr. Kohlmann.

18 MR. HARTMAN: We'd like to approach for a moment
19 if we can.

20 (A sidebar conference was had on the
21 record.)

22 MR. HARTMAN: Given the inflammatory nature of
23 what Mr. Kohlmann has testified to, which I think Your
24 Honor acknowledged in the original opinion, although you
25 decided that he could testify as to videos that were seen

1 and what not, I would ask The Court to give a preliminary
2 First Amendment instruction so the jury understands what
3 they saw, in themselves, is not illegal, in and of itself.
4 I mean, the government's using it, and they will argue it
5 for how they want to use it and that's fine, but I would
6 just ask for a preliminary First Amendment instruction so
7 the jury understands.

8 THE COURT: I think every single juror was told
9 during voir dire.

10 MR. HARTMAN: I know that the vast majority of
11 them were.

12 THE COURT: Well, do you care?

13 MR. HERDMAN: I do, Your Honor. I think
14 Mr. Kohlmann is a living, breathing example of someone
15 who's made a living out of this particular line of
16 research. He has a reason for doing it.

17 THE COURT: I think the request is, look, ladies
18 and gentlemen, neither acquiring nor watching the materials
19 that are alluded to, you may have seen, is itself a crime.
20 It may be offered as evidence of intent.

21 MR. SOFER: My argument is muddy these --

22 THE COURT: I agree. I agree. I'm not going to
23 grant the request.

24 MR. HARTMAN: Okay.

25 THE COURT: I'll consider it in the course of

1 jury instructions, but not now.

2 (Sidebar concluded.)

3 MR. HARTMAN: Your Honor, we have no questions.

4 Thank you, Mr. Kohlmann.

5 THE COURT: Okay.

6 MR. HELMICK: Thank you, Mr. Kohlmann. No
7 questions for Mr. Kohlmann.

8 THE COURT: Thank you, Mr. Kohlmann. You may
9 step down.

10 MR. HERDMAN: Thank you very much, Your Honor.

11 THE COURT: And if I understand correctly, we
12 have some matters to take care of ourselves with regard to
13 some final exhibits that may be offered on behalf of the
14 government.

15 MR. SOFER: Yes, Your Honor.

16 THE COURT: And that given the hour and that time
17 that might take just to put all that together, we'll
18 adjourn for the day or --

19 MR. SOFER: That's fine with us, Your Honor, if
20 that's what Your Honor wishes.

21 MR. HARTMAN: Can you hang on one second, Judge?
22 No objection to that.

23 THE COURT: Okay. Ladies and gentlemen, well
24 begin tomorrow morning at 8:30 and it may take about an
25 hour or so for the government to wrap up its case, and then

1 the case will be with the defense, if they wish to start
2 off with any evidence. So for them, they don't have to.
3 Each defendant has a right to put the government to its
4 proof and let it go at that, and we'll see. Okay.

5 Safe trip. Don't talk about the case, keep an
6 open mind, and we'll see you in the morning.

7 (Jury excused at 2:25 p.m.)

8 THE COURT: Okay. So where are we and what do we
9 need to do?

10 MR. SOFER: Again, I think, Your Honor, the
11 government and defense counsel have worked out a
12 stipulation. I think there's one issue counsel for the
13 defense wanted to --

14 THE COURT: And I'm sorry, stipulations as to
15 what? You may have told me once in the past and I've
16 forgotten.

17 MR. SOFER: There are a series of pieces of
18 evidence. They include phone records, that kind of
19 material. There are some other --

20 THE COURT: Phone records, you mean like toll
21 records?

22 MR. SOFER: Toll records or local call detail
23 from cell phones. There are a number of other items that
24 were recovered in searches of the defendant's homes,
25 residences. Instead of calling the people who actually

1 executed the search warrants, we would just ask for -- we
2 have asked, and I believe the defense has agreed to
3 stipulations that these items were found in certain places
4 and certain locations.

5 I think the only thing that I'm left -- and I'm
6 sure counsel will tell me if I'm wrong about this -- but
7 the only thing that's left that has any controversy to it
8 are the swords and knives, which were the subject of a
9 previous motion in limine, I believe, by counsel for Marwan
10 El-Hindi, which I believe counsel for Mohammed Amawi
11 joined. I believe Your Honor denied, I believe -- my
12 recollection is, it was so long ago now, I believe Your
13 Honor denied that request, but the government also agreed
14 that we would not bring in the actual swords and knives
15 themselves and would only show the jury photographs,
16 essentially, that have been loaded into the computer.
17 98 percent of this stuff, if not 100 percent of it is
18 already loaded into our trial presentation software and
19 that's how we would propose publishing it to the jury.

20 THE COURT: And so take about a half-hour.

21 MR. SOFER: I think somewhere between a half --

22 THE COURT: Everything you're talking about, all
23 the subjects and everything?

24 MR. SOFER: Between a half-hour and an hour to
25 just show it to everyone. We'd ask The Court to also read,

1 obviously, the fact that the parties have stipulated to
2 this. And in this context, the formal definition of what a
3 stipulation is may be appropriate as well.

4 THE COURT: Why don't you try to give me whatever
5 it is you want -- you, collectively, come up with what you
6 want me to say, that's fine.

7 MR. SOFER: I believe it's already been drafted
8 into the document which we can give The Court a copy of it
9 early tomorrow morning or e-mail it to Your Honor if you'd
10 like.

11 THE COURT: Tomorrow morning's fine.

12 MR. SOFER: And that's it. As soon as those
13 items are published to the jury, the government will
14 formally rest, and we can begin whatever defense case there
15 may be. In that regard, I have a number of issues I wanted
16 to bring to The Court's attention.

17 THE COURT: I noticed a bunch of e-mails in
18 reference to defense witnesses. I haven't been able to
19 look at that stuff. I've been out of town all day
20 yesterday and here all day today.

21 MR. SOFER: Let me give you the basis of the
22 government's concern. We remain, at least as until the
23 government rests, by agreement with counsel for Marwan
24 El-Hindi, the government remain walled off, formally walled
25 off from DOJ counsel, Department of Justice counsel, who

1 have been working to try to get the witnesses that Marwan
2 El-Hindi had listed into the United States. That's my
3 understanding. Obviously, I know nothing about the details
4 of that. I don't know where we sit with that. I'm not
5 asking to know where we sit with that, except that as we've
6 indicated to The Court when this whole issue about bringing
7 witnesses in by television set essentially came up, I think
8 the government should be entitled, particularly in a
9 situation like this to have a sum, I'll call it pedigree
10 information, for lack of a better word, about the
11 individuals that the defense wishes to call. As a
12 practical matter, in order for us to conduct any kind of
13 investigation as to whether these people even are who they
14 claim to be on the television set.

15 THE COURT: Whether there is a Tom Jones living
16 in --

17 MR. SOFER: Just even on that -- that's the first
18 cut. It's not formerly what we do when a defense witness
19 gets on the stand. There's more exhaustive investigation
20 of those individuals, for instance, to find out if they
21 have a criminal record or something of that nature. Here,
22 we are handicapped in a number of different ways, which I
23 won't bore The Court with now, other than to say, contrary
24 to counsel's previous representations that we get on
25 airplanes and we fly wherever we want, it's actually quite

1 the opposite. In order for the government to go travel to
2 a foreign country, enlist the help of the local
3 authorities, et cetera, there's -- you can imagine, there
4 are forms that would -- that pile up on the desk, there are
5 mutual legal assistance treaties between countries as to
6 how this kind of interaction can take place. It's often
7 regulated by --

8 THE COURT: I would gather, one might take
9 exception to persons affiliated with another law
10 enforcement agency's wandering.

11 MR. SOFER: One might even think that one could
12 be arrested and placed in jail for doing that, so
13 absolutely, Your Honor is correct.

14 THE COURT: They can offer a ticket.

15 MR. SOFER: As long as they have the bail men to
16 get me out of --

17 THE COURT: Actually, I hadn't thought about
18 that. I did get a confirmation from our IT people that
19 they've tried the video hookup, and it seems to be working
20 okay.

21 MR. HARTMAN: We -- we have, and I believe I sent
22 this to government counsel, I might not have copied Greg on
23 it. We have five foreign witnesses, one of whom we've made
24 arrangements for them to come so they'll testify in person.
25 Two have been scratched and two the DOJ wall counsel is

1 working through the Emlattes, and I think he probably --
2 Greg's probably underestimated the amount of forms and
3 paperwork and stuff like that. Frankly, we don't have any
4 idea what's going to happen if they're -- if we're going to
5 be able to get them here or on the video link or not, so we
6 don't know --

7 THE COURT: Certainly, in terms of --

8 MR. HARTMAN: -- but they know who they are, too.

9 THE COURT: But in it terms of making whatever
10 arrangements, if the arrangements to get them here in
11 person cannot be completed by the time you will be resting
12 your case and moving onto Mr. Amawi's case, I have no
13 objection, if you can give me the representation, Judge, we
14 understand that they can be available within whatever time
15 frame defendant anticipates they can be available in
16 person, if you can find that out separately or jointly. In
17 other words, saying we'll interrupt your case too, in that
18 fashion. And if that doesn't work, then we'll have to go
19 to whatever fall back of the video presentation. Okay?

20 I'm -- all I'm saying, to everybody, I'm willing
21 to let the schedule be scrambled a tad, it looks as though
22 it's simply a matter of running the last lap or two for
23 them to get on an airplane to get off in Detroit and come
24 down here.

25 MR. HARTMAN: Appreciate that.

1 THE COURT: Keep everybody posted.

2 MR. SOFER: And for the El-Hindi witnesses, Your
3 Honor, because we entered into this agreement and because
4 the government -- not us, but some other counsel in
5 Washington -- has been dealing with these witnesses at
6 least, we're confident that somebody has collected sort of
7 the most basic information about these individuals. If it
8 was -- if only to determine whether they were eligible to
9 come into the United States. What we're asking counsel for
10 is -- and of course they don't have to do this, but I'd ask
11 The Court to consider weighing in on this as well -- is to
12 drop the wall now, which is a couple days prior to -- it's
13 actually only one day prior to us resting, which is what
14 the agreement actually says, so we can now pierce that veil
15 and take a look at this information and make sure that
16 whatever information has been collected can be acted upon,
17 and we can conduct our investigation; that is, the trial
18 team can conduct the investigation so that we may
19 adequately cross-examine these witnesses.

20 MR. HARTMAN: And I would respond that I will
21 give the -- I have no problem giving the basic information
22 for the person who's coming in person to testify live, but
23 as to the two people we don't know yet, it is so delicate
24 bureaucratically that I'm not willing to drop that wall
25 because if the government on the other side gets involved,

1 it's going to be even more difficult for us to try to get
2 these witnesses. They're Egyptian police officers.

3 MR. SOFER: Here --

4 MR. HARTMAN: Which makes it very difficult for
5 the Department of Justice to use the Emlattes to try to get
6 them over here. And frankly, I don't think we're going to
7 have any success at all. I think we're going to hit a
8 stone wall, and we're going to find out in about 48 hours
9 that Egypt said no, forget it.

10 THE COURT: Forget it.

11 MR. HARTMAN: They're not coming, they're not
12 going to testify via video. They're not going to do
13 anything, which they have a right to do under the treaty.

14 THE COURT: Let me also say, let's -- in other
15 words, your saying you presently expect that by the end of
16 the week, Friday, which is about 48 hours, right, you
17 anticipate you're going to know what the deal is?

18 MR. HARTMAN: Yes.

19 THE COURT: And I will say to you that once we
20 see what the deal is, if these witnesses are coming, then
21 if you need a bit of additional time, again, if you can
22 work it out in terms of their arrival and departure, but if
23 you need some additional time to confirm that there is an
24 Egyptian police force and these guys are employed by it,
25 and these are the ranges, and these are their jobs, and so

1 forth and so on.

2 MR. SOFER: I'm sorry, Your Honor, I'm not
3 worried about that so much with these witnesses as a
4 result, again, as of the fact that the government -- U.S.
5 government has been involved in this on some level. I
6 assume government to government, although I don't know.

7 And -- and as a practical matter, if Mr. --
8 Mr. Hartman is unwilling to give us this information today,
9 we'll get it tomorrow by virtue of the agreement that we
10 entered into with Mr. Hartman and counsel, because the
11 letter that we entered into says, on the day the government
12 rests, the wall falls down. So tomorrow -- I asked for an
13 extra day so we can do what we have to do. If he's
14 unwilling to do that, we'll catch up tomorrow. But
15 tomorrow, by virtue of -- by operation of the agreement
16 that we entered into with defense counsel, that wall comes
17 down. It says when the government rests its case, this
18 information will be transmitted from walled counsel to
19 trial counsel so that we can begin conducting that
20 investigation.

21 THE COURT: Okay. And then all I would ask is
22 that do Mr. Hartman and Mr. Boss and their clients, and
23 ultimately all of us, the courtesy of, before anything is
24 done that might jeopardize whatever is going on, just talk
25 to each other and say, look, this is our understanding that

1 somebody goes knocking on the door in Egypt for legal
2 attache from the Cairo office, or whatever, if there is
3 one, goes and knocks on the police commissioner door, do
4 you have any idea for district 12 precinct 3, we're going
5 to lose any chance of a witness. That, in turn, has all
6 kinds of problems.

7 You people talk to each other. I know you don't
8 want to interfere with their ability to call a witness. On
9 the other hand, I think it's fair to say that you don't
10 want to interfere with, A, complying with the agreement
11 you've reached, and B, their ability to be able to
12 cross-examine.

13 MR. HARTMAN: Frankly, we'll meet with the
14 government and tell them exactly what I expect these
15 witnesses to say.

16 THE COURT: Okay.

17 MR. HARTMAN: And they can -- and they are -- I
18 mean the background check won't be hard if we get the
19 approval for this to happen, they're cops. So I -- I don't
20 intend to try to get in the way of their opportunity to
21 cross-examine. I do need to protect my ability -- these
22 are such vital witnesses to our defense, we really need to
23 protect, to the extent we can.

24 THE COURT: I understand. And I will suggest to
25 you that you might let them know exactly the nature and

1 delicacy, if you choose to do so.

2 MR. HARTMAN: I will do that today.

3 THE COURT: That's all.

4 MR. SOFER: Now, Your Honor, this same problem is
5 multiplied times two when it comes to the Amawi witnesses.
6 And the reason for that is, again, as far as I know, there
7 was an e-mail traffic about this. We've been walled off so
8 I don't know whether -- whether and to what extent the
9 Amawi team has dealt with walled counsel. My understanding
10 was -- I thought that they had not. Counsel Hassink
11 corrected me and said there has been some interaction. To
12 the extent that it's a lesser interaction and Washington
13 has even less information about these witnesses, and we've
14 been told, I believe, that there are nine of these
15 witnesses testifying from Jordan, it just exacerbates the
16 problem.

17 So again, what we've done is, we've requested
18 from counsel at least some very basic information about
19 these individuals, their dates of birth, their country ID
20 number, if the country issues an ID number, their place of
21 residence, again, just so we can -- when the screen opens
22 up and there's some person sitting there, whether we can
23 have any confidence that at least that this is even the
24 person who the defense claims the person to be.

25 So far, we've received no indication whatsoever

1 that they'd be willing to do that. Again, I'm hoping to
2 appeal to counsel and The Court. What we don't want to do
3 is get --

4 THE COURT: Let me hear from them. What's the
5 deal there?

6 MR. WHITMER-RICH: We have been in communication
7 with walled-off counsel and pursued the process of
8 attempting to have witnesses, who would be able to appear,
9 testify live in court. That was our strong preference to
10 have in-court witnesses. It appears to us and has appeared
11 for a little bit of time now to walled-off counsel, that we
12 aren't even close to that being able to happen, just given
13 our time constraints. In light of that, we are proposing
14 at this point that those witnesses would testify via video
15 conference.

16 The list -- we provided our witness list on
17 Friday and then we supplemented in response yesterday,
18 stating of those, these are the ones that are overseas.
19 And I think Mr. Sofer represented there may have been nine
20 of those. I think four of them are members of Mr. Amawi's
21 immediate family. And so I would assume the government
22 knows who those people are. I don't --

23 THE COURT: Have you listed them?

24 MR. WHITMER-RICH: Yes. Yes. They're on the
25 witness list.

1 THE COURT: That's what I mean, you've identified
2 them?

3 MR. WHITMER-RICH: Correct. And you know, we
4 also are facing considerable challenges in trying to
5 coordinate this testimony and communicate with these people
6 and so forth. I think we feel like we've met our
7 obligations in terms of disclosing the identity of our
8 witnesses.

9 THE COURT: What about the five who are not
10 family members, what have you told the government about
11 them?

12 MR. WHITMER-RICH: We've given their names and
13 the fact that they'll testify.

14 THE COURT: Addresses?

15 MR. WHITMER-RICH: We have -- to the extent
16 that --

17 THE COURT: Other contact information, whatever?

18 MR. WHITMER-RICH: We have shared that
19 information with walled-off counsel in pursuit of that
20 process. And to the extent the same rule applies, then I
21 presume that information will be delivered to government
22 tomorrow.

23 MR. SOFER: I guess, again, I was not aware of
24 the level of involvement between Amawi team and walled
25 counsel. Tomorrow and when the government rests, well,

1 then, according to our agreement with the El-Hindi team,
2 and I think, I hope that counsel for Amawi will -- they
3 sort of glommed onto this -- and so I assume that they will
4 agree that that to the extent that there is any agreement,
5 that it would apply to them as well. We -- when we pierce
6 that veil, so to speak, we'll look at the information.
7 That may -- we may have all we need, I don't know, and
8 we'll come back to The Court if tomorrow --

9 THE COURT: Well, if it is not, in other words,
10 if you get -- if what you are given is the equivalent of
11 Tom Smith, Anytown, USA, then let counsel know what kind of
12 further information you think you need. Candidly, you
13 know, in terms of basic contact information and even some
14 sense of who a witness is, and if nothing else, at least,
15 generally, the topic that the witness is generally likely
16 to testify about. I think you should provide it. It's
17 part of the deal when I put the kind of pressure that I
18 know I do on the government in every case that I do, that I
19 have, open your file up and let them see beforehand.
20 That's the fair thing to do and that's the right thing to
21 do. And it works both ways. That's all. But again, the
22 initial veil is going to get lifted tomorrow.

23 MR. SOFER: Yes.

24 THE COURT: And once it does, you talk with each
25 other and when one of you is unhappy with the other one

1 because the other one is being obtuse and obdurate, come
2 see me, and I'll do what I can to shred the veil, if
3 necessary, we'll shove it back down whichever direction.

4 MR. SOFER: Understood, Your Honor.

5 THE COURT: I really do hope that these are
6 problems that can be resolved by professionally cooperative
7 attitude you've all displayed all along any way. So --
8 okay. So -- and if you can, you know, sometime tomorrow
9 once you find out, talk to each, and we'll go from there.

10 MR. SOFER: We'll update The Court tomorrow after
11 we've learned whatever information we've learned.

12 In the same vein, Your Honor, to the extent that
13 counsel for any of the defendants are planning on playing
14 recordings much like the government did, we'd ask for the
15 designations of those recordings again, so that we are
16 capable of determining whether the translations are
17 accurate, the transcriptions are -- and the audibility
18 issues are all taken care of so that we don't end up --
19 which we have done, I think, a fairly good job of
20 together --

21 THE COURT: I agree.

22 MR. SOFER: During the course of the government's
23 case, having to stop the proceeding and say, well, wait a
24 second, we never heard this, we don't know if we can hear
25 that, and having audibility hearings in the morning and

1 trial in the afternoon --

2 THE COURT: The audibility is in the evening and
3 nighttime. The trial in the morning and afternoon.

4 MR. SOFER: That's fine, except when the
5 witnesses are testifying seven hours ahead, my guess is
6 it's going to modify our calendar a little bit.

7 THE COURT: Let me just start with you guys. Do
8 you have any clips that you anticipate?

9 MR. HELMICK: No, Your Honor, we do not.

10 MR. HARTMAN: Yes, well -- and they were all
11 provided to the government beforehand. They're all in the
12 same series that we gave.

13 MR. SOFER: Well, we have probably, I'm going to
14 estimate three, 4-inch notebooks full of clips that were
15 provided to us by counsel.

16 THE COURT: Yeah, so when do you think you can
17 sort of designate with a greater degree of specificity what
18 you're going to be sifting out, because that's very fair.
19 We all expect --

20 MR. HARTMAN: I understand. When do I think I
21 might be able to do that? I would guess Monday at the
22 latest.

23 THE COURT: Monday morning, but you're going to
24 be starting the case --

25 MR. HARTMAN: On Friday.

1 THE COURT: When are you going to start playing
2 the recordings?

3 MR. HARTMAN: If I'm going to play any on Friday,
4 we'll let the government know tonight --

5 THE COURT: Okay.

6 MR. HARTMAN: -- what we're going play on Friday.

7 THE COURT: By 11:59 p.m. EDT?

8 MR. HARTMAN: Tonight, by the time the sun goes
9 down.

10 THE COURT: Okay. Before the grid iron show
11 curtain goes up.

12 MR. HARTMAN: I'll be working, I'm not going.

13 THE COURT: Okay.

14 MR. HARTMAN: And then for Monday.

15 THE COURT: You'll let them know by about 7:00 or
16 9:00.

17 MR. HARTMAN: Yes. They're -- they're
18 certainly -- I mean, in some ways, I can't say because we
19 don't know what our --

20 THE COURT: I understand, but -- but my question
21 is, do you at least have a smaller universe of which you're
22 likely to be selecting what you, in fact, may be doing?

23 MR. HARTMAN: I believe we do. I don't know if
24 we gave that to the government before we started to cross
25 Griffin or not. There's a list that I can give them that's

1 going to make it smaller than those binders. I can at
2 least do that.

3 THE COURT: Good. And then, if you can, as I
4 say, this evening, you can do it by about 7:00. If you
5 tell them, let's say, 8:00 at the latest, but they've got
6 to sit down and do a lot of homework, too.

7 MR. HARTMAN: There won't be much on Friday, and
8 we'll tell them exactly what it is by tonight.

9 THE COURT: Okay.

10 MR. SOFER: And Judge --

11 THE COURT: Likewise, if by -- if you can do it
12 by, let's say, Saturday noon, get them the rest that you
13 anticipate, again, if you have to over guess, that's fine
14 so they know the universe which you're likely to be
15 drawing, to the extent it's gotten more constricted as
16 things evolved.

17 MR. HARTMAN: I can't promise The Court I can do
18 it by Saturday at noon, but I will promise The Court I will
19 do it as soon as we can.

20 THE COURT: Okay. Because, you know, if they
21 come to me and say, Judge, we've got a lot more to do than
22 we expect to do, I'm likely to say, well, we'll have to
23 take a day off and let them do it. And that's not an
24 invitation to you. I'm not trying to be strict.

25 MR. HARTMAN: Nor would that be what I ask for,

1 but we have decisions on which witnesses we're going to
2 call that are on our list, and until those decisions are
3 made, I don't know.

4 THE COURT: I understand.

5 MR. HARTMAN: All right. Thanks.

6 MR. SOFER: The reason that we need to see them
7 or want to see them is not just the question about their
8 audibility and translation and transcription, I think --
9 and I'll have to remind The Court, the government objects
10 to the introduction of certain recordings if they, in fact,
11 are self-serving hearsay, if they are, in fact, are another
12 crack at cross-examination. And we often, I think we -- I
13 mean, the lawyers are often bringing Your Honor issues
14 without seeing the actual instances of this. We want to
15 see the meat of this issue so we can properly object.

16 THE COURT: Well, he said by Monday. He said by
17 Monday at 5:00 everything that you expect to play during --
18 and how long do you think your case is going to take to
19 present, your best guess? I know it's -- you won't know
20 until you say no further questions, we've called our last
21 witness, we've offered all our exhibits. I understand
22 that.

23 MR. HARTMAN: Judge, to be perfectly honest with
24 you, it could end on Friday and it could go for two weeks.

25 THE COURT: Okay.

1 MR. HARTMAN: And I understand what Mr. Sofer's
2 saying, but, you know, I'm not -- I'm not going to point
3 out the evidentiary reasons that I want to put clips in for
4 him to object beforehand. I mean, that's what we do when
5 we get here. The same way we did with the government.

6 MR. SOFER: Actually, Judge, that's exactly what
7 we need --

8 THE COURT: I tend to agree with you. Now, I'm
9 expecting an open book at some point and earlier rather
10 than later. That's all.

11 MR. HARTMAN: As soon as possible.

12 MR. SOFER: In the same regard for the El-Hindi
13 team, at least, we noticed that of their 16 witnesses, five
14 of them, I believe -- could be off by one -- are government
15 witnesses that they're seeking to recall. As we've debated
16 this, again, I don't pretend to debate this issue in a
17 vacuum either, I've stated for The Court, the government
18 does not disagree with a concept that a defense team can
19 recall a government witness, but the fact that five, that's
20 more than a third of the witnesses that we call -- or
21 approximately a third of the witness we call, are on the
22 defense witness list, I think supports at least my concern
23 at what we're going to do here is relitigate a whole bunch
24 of things and recross people who have already been -- who
25 have already testified. So in the same vein, Your Honor,

1 much as the government was asked to do, we would just ask
2 for some kind of offer of proof here so that we can frame
3 out these issues. We don't inconvenience people either,
4 have them fly back or drive all the way here simply to sit
5 for a debate about whether or not they can or should
6 testify.

7 And again, what -- what I object to in this time
8 line is, sure things change during a trial, but they --
9 it's been two-plus years here, Judge. I have a very
10 difficult time accepting the notion that we can't at least
11 get to these big issues without -- and clear the defense's
12 whole play cards tight to their vest, which they're
13 entitled to do. I think what we're going to end up buying
14 is a giant delay and that's what we're hoping to avoid
15 particularly because if it turns out that the defense
16 recalls a third of the Government's witnesses in this case,
17 and The Court allows that, and it's going to -- it's going
18 to require then the government's rebuttal case to be much
19 longer. And we don't think that's the right way of doing
20 it.

21 We think we've talked about it a lot. The
22 government just doesn't -- yes, Your Honor has the power,
23 certainly, under the rules to control how evidence is
24 brought out, order of witnesses, et cetera, but the way
25 that is shaping up, I think, rather than being more

1 efficient and less confusing and less than a waste of time,
2 we are headed down a road which we have great concerns
3 about. Again, I don't want to debate this now, litigate it
4 now, we're just asking, show us, show us something of what
5 you have so at least we can articulate our objections if we
6 have any about it.

7 MR. HARTMAN: I guess my first response with --
8 to that would be that the objections that the government
9 made to the things that we did during cross-examination
10 were, this is more appropriate for the case in chief,
11 Judge, you can't let them do this during cross.

12 THE COURT: Well, I -- I plan on Friday to do as
13 is my custom, to ask you as of Tuesday, who your witnesses
14 will be and what do you expect them to testify about. And
15 on Tuesday, I will ask you the same about Wednesday at the
16 close of business. And I will expect you to be, you know,
17 we're going to play these clips and these are the general
18 areas of inquiry, and these are the exhibits I intend to
19 offer or have the witness testify about. And I assume that
20 that will give Mr. Sofer a somewhat, well, not a fully
21 three-dimensional topographical map, it will be a lot more
22 than he has now and enough to raise --

23 MR. HARTMAN: I can tell The Court right now that
24 some of the government witnesses who can testify because
25 they reviewed those recordings, will be reviewing clips

1 that weren't played during the government's case in chief,
2 that the government objected to us playing on cross because
3 it was too much, and so that's some of what we'll do with
4 some of those witnesses is, we'll --

5 THE COURT: We'll wait and see. It doesn't make
6 much sense to keep talking about this now because nobody
7 knows what we're talking about, including yourself.

8 MR. HARTMAN: Heck, I might squat, Judge.

9 THE COURT: Okay, Steve.

10 MR. SOFER: Lastly -- I'm sorry, Judge.

11 THE COURT: No, go ahead. No, you go. Let's get
12 the last out of you. It's a step in the right direction.

13 MR. SOFER: I think you're trying to say I have a
14 difficult problem closing my mouth.

15 THE COURT: Not at all. I just simply have
16 whatever's on your mind now so we can go --

17 MR. SOFER: You don't want to hear everything
18 that's on my mind, Judge, that much I can assure you.

19 The last sort of piece of this is simply other
20 discovery matters, which include reciprocal Jencks
21 materials and those materials which are to be provided
22 under Rule 16(b)(A), which includes physical or other
23 evidence which the defense contends to introduce. We have
24 received some of these materials from the El-Hindi team,
25 just a few in terms of books and binders. We received

1 nothing else, as far as I'm aware of, from any counsel for
2 any defendant, and we're requesting those materials
3 formerly now, Judge.

4 THE COURT: Okay. Let's start in the back of the
5 room and work forward. Do you have any evidence that you
6 plan to offer, physical or tangible evidence or exhibits
7 that you plan to or that are not already into evidence?

8 MR. HELMICK: Not at this time, Your Honor. If
9 that changes, it's only because just -- we try to get some
10 telephone records, and what we said was not -- what we got
11 is not what we asked for, so there's always a chance that
12 that could arise. Right now, I have nothing that we would
13 offer to provide to the government. If that changes, I'll
14 let them know immediately.

15 THE COURT: Okay.

16 MR. HARTMAN: We did give the government some
17 materials, and we also brought -- they came over to our
18 office to look over all the evidence, and we copied it for
19 them, everything that they wanted copies, I believe. If
20 you guys think there's nothing else that --

21 MR. SOFER: That is accurate. We're just, again,
22 trying to narrow -- likewise, the government had provided a
23 long time ago --

24 MR. HARTMAN: Right.

25 MR. SOFER: -- access to all of our evidence, but

1 before trial we had to create an exhibit book. That's
2 essentially what we're saying now is tell us what of that
3 giant pile you actually seek to produce.

4 MR. HARTMAN: If there's anything we're going to
5 introduce on Friday -- which I don't know if there is --
6 we'll try to get that done by tonight, tomorrow morning at
7 the latest. And then the rest of it over the weekend.

8 THE COURT: Okay.

9 MS. CLEARY: Judge, we would hope to be able to
10 get the exhibits electronically to the government Friday,
11 no later than Saturday evening.

12 THE COURT: And Mr. Ivey, you stood up, and we
13 shoved you back down.

14 MR. IVEY: My colleagues, they persuaded me that
15 I should first discuss my issue with the El-Hindi team, and
16 if it's necessary, I'll bring it to The Court's attention
17 in the morning.

18 THE COURT: Okey dokey. Hearing no objection to
19 the --

20 MR. HARTMAN: Actually, Judge, there's one issue
21 that I need to correct for the record. On April 29th
22 Mr. Boss played a recording. It was 1D81 and 66747. He
23 referenced that as being from July 14th of 2004, and I
24 believe it was actually from July 15th of 2004. He just
25 had the date wrong, and I wanted to correct the record.

1 MR. SOFER: We don't object to a correction of
2 the record, Judge.

3 One -- one last thing of scheduling is the
4 whatever -- I assume there will be a Rule 29 motion, and we
5 also saw just today the Masloum team filed another motion
6 to dismiss the case notice based on Rule 29, I believe.
7 We'd like on some guidance from Your Honor about A, when
8 you want us to be prepared to do that, given the way things
9 are progressing, and B, how -- how detailed a -- a
10 presentation you want from both sides in this regard? I
11 know different judges do this different ways, and we just
12 don't -- I don't want to prepare three hours of talking if
13 it turns out Your Honor wants to hear 10 minutes.

14 THE COURT: I greatly -- prefer it greatly your
15 streamlined version. What I would suggest, quite candidly,
16 I rarely take argument on it, and most commonly, I simply
17 note it and take it under advisement, unless I am persuaded
18 really without any question that dismissal is appropriate.
19 And in 14 years I don't think I've been so persuaded.
20 Seriously, at the close of the Government's case and at
21 this basis, quite candidly, that the point what I've seen,
22 and I doubt whether I'd be inclined to do that for the
23 first time. I tried to listen quite carefully and take
24 note of what's been going on and make notes and pay
25 attention, and so I would expect that the presentations

1 will be primarily for the record and that doesn't take a
2 whole lot to make that.

3 I will say, however, that also it will be
4 inappropriate for me to say, counsel -- say Rule 29 motion
5 and sit down. If you really think there's something that,
6 hey, Judge, they didn't prove this element. There is no
7 evidence. This is the element of this charge, and it is
8 nowhere in the record. And if I turn to you guys and say,
9 oh yeah, where is it. But it's pretty bare bones.

10 And certainly, given the length of the trial and
11 the length yet to come, I'm very unlikely to say we're
12 going to spend tomorrow from 10:00 in the morning until
13 5:00 in the afternoon on Rule 29. It would be more like
14 from 10:00 to 10:15. That's my custom and that's my
15 practice.

16 At the conclusion of whatever, I'm likely to say,
17 counsel, take it under advisement. Call your first
18 witness. Okay.

19 Anything else?

20 MR. SOFER: No, Judge.

21 MR. HARTMAN: No, Your Honor.

22 THE COURT: Okay. You guys are ready to go
23 tomorrow?

24 MR. HELMICK: Correct, Your Honor. We'll do
25 opening statement first, and then just three or four

1 witnesses.

2 THE COURT: Okay. And do they know who the
3 witnesses are likely to be?

4 MR. HELMICK: Absolutely.

5 MR. SOFER: And I will note for the record the
6 Masloum team did provide us with the very basic information
7 about their local witnesses as well. We make that same
8 request, not just for the foreign witnesses, but for the
9 local witnesses, at least we have a date of birth and a
10 location. We can determine whether these individuals have
11 a criminal history.

12 THE COURT: You can find the FBI number on your
13 own?

14 MR. SOFER: We can figure it out from there,
15 Judge.

16 THE COURT: For Amawi?

17 MR. BRYAN: We're set, Your Honor.

18 THE COURT: Okay. Fine. I'll see you guys in
19 the morning.

20

21

22

23

24

25

1 C E R T I F I C A T E

2
3 I certify that the foregoing is a correct transcript
4 from the record of proceedings in the above-entitled matter.

5
6 s:/ Angela D. Nixon

7 ----- Date
8 Angela D. Nixon, RPR, CRR

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 I N D E X

3 WITNESS

3 PAGE

4 Evan Kohlmann

4 5610

5 (Direct Examination)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25